



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2017-0335

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RESPONSE TYPE INTERIM FINAL

REQUESTER:

Julian Tarver

DATE:

FEB 23 2017

DESCRIPTION OF REQUESTED RECORDS:

ADAMS Accession Number ML0890590124

PART I. -- INFORMATION RELEASED

- Agency records subject to the request are already available in public ADAMS or on microfiche in the NRC Public Document Room.
- Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A -- FEES

AMOUNT*

\$

*See Comments for details

- You will be billed by NRC for the amount listed.
- None. Minimum fee threshold not met.
- You will receive a refund for the amount listed.
- Fees waived.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- You may appeal this final determination within 30 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or FOIA.Resource@nrc.gov. Please be sure to include on your letter or email that it is a "FOIA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

In conformance with the FOIA Improvement Act of 2016, the NRC is informing you that: (1) you have the right to seek assistance from the NRC's FOIA Public Liaison; (2) you have the right to seek dispute resolution services from the NRC's FOIA Public Liaison or the Office of Government Information Services; and (3) notwithstanding the language in Parts I.B and II.B of this form, you may appeal this final determination within 90 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or FOIA.Resource@nrc.gov. Please be sure to include on your letter or email that it is a "FOIA Appeal."

SIGNATURE - FREEDOM OF INFORMATION ACT OFFICER

Stephanie Blaney *[Signature]*

2017-0335

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**RESPONSE TO FREEDOM OF INFORMATION
ACT (FOIA) REQUEST Continued**

RESPONSE TYPE INTERIM FINAL

REQUESTER:

Julian Tarver

DATE:

FEB 23 2017

PART I.C COMMENTS (Continued)

This closeout also serves as acknowledgment of your FOIA.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, DC 20555-0001

October 29, 2008

**NRC REGULATORY ISSUE SUMMARY 2008-26
CLARIFIED REQUIREMENTS OF TITLE 10 OF THE CODE OF FEDERAL
REGULATIONS (10 CFR) SECTION 50.54(Y) WHEN IMPLEMENTING 10 CFR
SECTION 50.54(X) TO DEPART FROM A LICENSE CONDITION OR TECHNICAL
SPECIFICATION**

ADDRESSEES

All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.54(y) when licensees implement 10 CFR Section 50.54(x) to depart from a license condition or technical specification in an emergency. This RIS requires no action or written response on the part of the addressees.

BACKGROUND

Section 50.54(y) states, "Licensee actions permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator..." This describes the lowest ranking individual authorized to approve the departure from a license condition or technical specification. An individual other than a licensed senior operator could make such a decision, as long as the person is in a position of authority greater than the licensed senior operator. The Statements of Consideration (SOC) that accompanied the final rule for "10 CFR Part 50, Applicability of License; Conditions and Technical Specifications in an Emergency," in 48 FR 13966, April 1, 1983, stated that the decision to depart from the license could be made by any licensed senior operator for the unit involved. However, in an emergency, that decision would pass to more senior licensee personnel, if available, as higher authorities in the chain of command. That interpretation was reiterated by Mr. John A. Zwolinski, Director, BWR Project Directorate #1, to Consumers Power Company in a November 5, 1986 letter with the subject, "Consumers Power Company (CPC) Request for Interpretation of 10 CFR 50.54(y)."

In 2004, the staff approved Nuclear Energy Institute (NEI) 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan," which licensees used as a template for making security plan changes. Some industry personnel questioned whether this

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document was contrary to the staff's earlier position, in that the template required the highest ranking licensee official (e.g., Emergency Director (ED)) to receive approval from a licensed senior operator to depart from the license.

DISCUSSION

Section 50.54(y) of 10 CFR does not require that the decision to depart from the license or technical specifications be made only by a licensed senior operator or that the individual making the decision possess a senior operator's license. Rather, such a decision could be made either by any licensed senior operator or any individual in a superior position to a licensed senior operator. As stated in the SOC, if "more senior licensee personnel" are available, "the decision to depart from the license in an emergency would pass to them (as higher authorities in the chain of command)." There is nothing in the rule to indicate that the "more senior licensee personnel" are also required to be licensed senior operators. In addition, there is nothing in the rule that would require the "more senior licensee personnel" to obtain the concurrence of a licensed senior operator to make such a decision, and the SOC does not contain any discussion suggesting such Commission intent.

With respect to the language in the NEI template, which states that the departure decision would be made by the ED, with approval, at a minimum, from a licensed senior reactor operator, the NRC notes that the NEI template is not an NRC interpretation of its regulations. This template, once approved, described one way to comply with NRC requirements. A licensee is free to utilize other approaches which comply with the requirements of the regulation as interpreted and applied by the Commission. Also, the fact that the NRC has approved a document that seems to employ more stringent measures (e.g., both the ED and senior reactor operator must concur on the departure) does not mean that less stringent measures would be insufficient in order to comply with the regulations. Each individual licensee is free to determine whether or not it wants to employ such a concurrence process.

SUMMARY OF ISSUE

The decision to depart from the license or a technical specification in an emergency shall be approved, as a minimum, by a licensed senior operator. If more senior licensee personnel are available, the decision to depart from the license in an emergency would pass to them as higher authorities in the chain of command. The rule does not specify that the senior licensee personnel be licensed senior operators or that they obtain the concurrence of a licensed senior operator to make such a decision.

BACKFIT DISCUSSION

This RIS does not represent a new or different staff position regarding the implementation of 10 CFR 50.54(x) and is consistent with the SOC for 10 CFR 50.54(x) and (y), and the staff guidance in the November, 1986 Zwolinski letter. It requires no action or written response. Any action by addressees to implement changes to their security or emergency plans, or procedures in accordance with the guidance in this RIS is strictly voluntary and therefore, is not a backfit under 10 CFR 50.109, "Backfitting." Consequently, the NRC staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was published in the *Federal Register* (73 FR 47853) on August 15, 2008 for a 60-day comment period. That period closed on October 14, 2008, and no comments were received.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. §§ 801-886) and therefore, is not subject to the Act.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain any information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

PUBLIC PROTECTION NOTIFICATION

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

CONTACT

Please direct any questions about this matter to the technical contact listed below.

/RA by TBlount for/

Michael J. Case, Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Technical Contact: F. J. Laughlin, NSIR/DPR
301-415-1113
E-mail: jeff.laughlin@nrc.gov

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Technical Contact: F. J. Laughlin, NSIR/DPR
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Distribution: RIS File
Accession No.: ML 080590124

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Dear FOIA Requester:

The FOIA Improvement Act of 2016, which was enacted on June 30, 2016, made several changes to the Freedom of Information Act (FOIA). Federal agencies must revise their FOIA regulations to reflect those changes by December 27, 2016. In addition to revising our regulations, we intend to update the Form 464, which we use to respond to FOIA requests.

In the interim, please see the comment box in Part I.C of the attached Form 464. The comment box includes information related to the recent changes to FOIA that is applicable to your FOIA request, including an updated time period for filing an administrative appeal with the NRC.

Sincerely yours,

Stephanie Blaney /S/

Stephanie Blaney
FOIA Officer