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MEMORANDUM FOR: Joseph M. Felton, Director
Division of Rules and Records
Office of Administration

FROM: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

SUBJECT: PUBLICATION OF PROPOSED RULE ON APPLICABILITY OF LICENSE
CONDITIONS AND TECHNICAL SPECIFICATIONS IN AN EMERGENCY

On July 23, 1982, the Commission approved for issuance a proposed amendment to 10 CFR Part 50, subject as above. Enclosed are nine copies of the subject notice which are ready, after signature, for publication in the Federal Register. Also enclosed are the related letters for transmittal to the following Congressional subcommittees to inform them of this action:

1. Subcommittee on Energy and the Environment
2. Subcommittee on Nuclear Regulation
3. Subcommittee on Energy Conservation and Power
4. Subcommittee on Environment, Energy and Natural Resources

The enclosed public announcement (3 copies) should be dispatched to OPA for issuance.

Also enclosed is a marked-up copy of the draft Federal Register notice from SECY 82-99 indicating the revisions requested by the Commission, the changes made as a result of your staff's suggestions, and other minor changes.

The Commission requested that 60 days be allowed for public comment. Accordingly, please insert the appropriate date on page 1 of the notice.

1/1 Edson M. Case

Harold R. Denton, Director
for Office of Nuclear Reactor Regulation

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Enclosures:

1. Federal Register Notice (9 copies)
2. Congressional Letters
3. Public announcement (3 copies)
4. Marked-up notice

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Tec. Spec.*

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NUCLEAR REGULATORY COMMISSION

10 CFR PART 50

Applicability of License
Conditions and Technical Specifications
in an Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing a change to its regulations which would clarify that all Part 50 licensees may take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety.

The rule is being proposed because NRC regulations currently do not permit deviations from license conditions or technical specifications under any conditions. Emergency situations can arise, though, during which a license condition or a technical specification could prevent necessary protective action by the licensee. The proposed rule would allow such action to be taken in emergency circumstances.

DATE: Comments must be submitted in writing on or before _____.

Comments received after this date will be considered if it is practical to do so, but assurances of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposed rule change to the Secretary of the Commission,

U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch. Copies of the comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D. C.

FOR FURTHER INFORMATION CONTACT: Charles M. Trammell, III, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555 (telephone: 301-492-7389).

SUPPLEMENTARY INFORMATION: The proposed change would clarify the regulations in 10 CFR Part 50 by providing that a licensee may take reasonable action that departs from a license condition or a technical specification in an emergency when such action is immediately needed to protect the public health and safety.

At present, NRC regulations do not permit deviations from license conditions or technical specifications under any circumstances. Emergencies can arise, though, during which compliance with a license condition or a technical specification could prevent necessary action by a licensee to protect the public health and safety. Licensees are understandably reluctant to take actions contrary to their licenses. Absolute compliance with the license in emergencies can be a barrier to effective protective action by a licensee.

Technical specifications contain a wide range of operating limitations and requirements concerning actions to be taken if certain systems fail and if certain parameters are exceeded. The bulk of technical specifications are devoted to keeping the plant parameters within safe bounds and keeping safety

equipment operable during normal operation. However, technical specifications also require the implementation of a wide range of operating procedures which go into great detail as to actions to be taken in the course of operation to maintain facility safety. These procedures are based on the various conditions -- normal, transient and accident conditions -- analyzed as part of the licensing process. Nevertheless, unanticipated circumstances can occur during the course of emergencies. These circumstances may call for responses different from any considered during the course of licensing -- e.g., the need to isolate the accumulators to prevent nitrogen injection to the core while there was still substantial pressure in the primary system was unforeseen in the licensing process before TMI-2; thus, the technical specifications prohibited this action. Special circumstances requiring a deviation from license requirements are not necessarily limited to transients or accidents not analyzed in the licensing process. Special circumstances can arise during emergencies involving multiple equipment failures or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances. In addition, an accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the licensee. Also, performance of routine surveillance testing, which might fall due during an emergency, could either divert the attention of the operating crew from the emergency or cause the loss of use of equipment needed for proper protective action.

Technical specifications or license conditions can be amended by NRC, and the proposed rule is not intended to apply in circumstances where time allows this

process to be followed. The proposed rule would apply only to those emergency situations where action by the licensee is required immediately to protect the public health and safety -- action which may be contrary to a technical specification or a license condition.

It is the intent of the proposed rule to allow deviations from license requirements only in the special circumstances described. It is not intended that licensees be allowed to deviate from procedures and other license requirements where these are applicable.

For these reasons, the Commission believes that there should be a specific provision in the Commission's rules clearly indicating that a licensee may take reasonable action that departs from a license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety.

In view of the fact that the rule permits a licensee to depart from NRC's requirements, the Commission expects that, if adopted, it would be applied rarely and only under the special circumstances described. The NRC would review carefully any licensee's use of the rule to determine whether the licensee had to act immediately in an emergency to avert possible adverse consequences to the public health and safety and may require written statements from a licensee concerning its actions after use of the provisions of this rule. The Commission recognizes that a licensee would need to exercise judgment in applying the rule and that, in its after-the-fact review, it may not agree in every instance with the licensee's actions. However, enforcement action for a violation of the rule would not be taken unless a licensee's action was unreasonable considering all the relevant circumstances having to do with the emergency.

The proposed rule also would require a licensee, under §50.72, to notify the NRC Operations Center by telephone of emergency circumstances requiring it to take any protective action that departs from a license condition or a technical specification. When time permits, the notification would be made before the protective action is taken; otherwise, it would be made as soon as possible thereafter. The impact of this reporting requirement on licensees would be negligible.

The proposed rule follows the recommendation in NUREG-0616, "Report of Special Review Group, Office of Inspection and Enforcement on Lessons Learned from Three Mile Island"* that NRC establish and announce a firm policy regarding the applicability of the license under emergency circumstances, with certain exceptions discussed below.

- a). The proposed rule does not require that departure from a license condition or technical specification have the concurrence of the most senior licensee and NRC personnel available at the time before the departure.

While the Commission does not disagree with the general concept that the most senior licensee personnel available at the time should be involved, the proposed rule specifies only that a licensed operator should obtain the concurrence of a licensed senior operator and does not go into further

*NUREG-0616 is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D. C. Copies may be purchased through the NRC/GPO Sales Program by using a GPO Deposit Account, MasterCard or Visa by calling the NRC/GPO Sales Office on (301) 492-9530 or by sending a check or money order payable to Superintendent of Documents to: Sales Manager 058, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555. Purchase orders are acceptable from Federal, state, and local government offices only.

detail as to which additional persons should be involved if time permits or which persons should be involved under other circumstances. The persons responsible for safe operation of the facility are already identified in the facility license and implementing procedures. Adding this requirement to the proposed rule itself is therefore believed to be unnecessary.

- b). The proposed rule does not require the concurrence of NRC personnel. Receiving the "concurrence" or "approval" of NRC personnel would amount to a license amendment using procedures contrary to those existing for amendments. The rule specifically applies to emergency situations where immediate action is needed and time is not available for a license amendment. Requiring the concurrence of NRC personnel available at the time tends to shift the burden of safety from the licensee to NRC - contrary to the proposed rule's intent. It could also shift the burden to NRC personnel on site who may be unqualified to concur in a proposed licensee action.

The Commission believes that the proposed rule on the applicability of license conditions and technical specifications in emergencies should be implemented by adding the necessary clarification to §50.54, "Conditions of licenses" and to §50.72, "Notification of significant events." The proposed rule would apply to all facilities licensed pursuant to Part 50.

The proposed rule does not provide significant guidance to Part 50 licensees for identifying those situations in which deviations from license conditions or technical specifications are allowable. In addition, the proposed rule and

the supplementary information does not contain standards to be used by the NRC staff in determining whether to take enforcement action against Part 50 licensees who deviate from license conditions or technical specifications in these types of situations. The Commission particularly solicits comments on these two areas.

ADDITIONAL COMMENTS OF COMMISSIONER GILINSKY:

I believe the decision to operate outside the Technical Specifications should be made by a senior reactor operator since I understand that reactor operators are not trained or tested on both the basis and importance of the Technical Specifications. I would be interested in receiving comments on this issue.

PAPERWORK REDUCTION ACT STATEMENT:

Pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96-511), this proposed rule has been submitted to the Office of Management and Budget for clearance of the information collection requirements.

REGULATORY FLEXIBILITY CERTIFICATION: In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C.605(b), the Commission hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. These proposed regulations affect licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. The amendment serves to clarify the applicability of license conditions and technical specifications in an emergency. The clarification would be incorporated as a condition of the respective operating licenses, and would require no action on the part of licensees. Accordingly, there is no new, significant economic impact

on these licensees; nor do these licensees fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

LIST OF SUBJECTS IN 10 CFR PART 50:

Antitrust, Classified information, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, and Reporting requirements.

For the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendment to 10 CFR Part 50 is contemplated.

PART 50 -- DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES:

1. The authority citation for Part 50 continues to read as follows:

AUTHORITY: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued

under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. New paragraphs (y) and (z) are added to §50.54 to read as follows:

§50.54 Conditions of licenses.

* * * * *

(y) A licensee may take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when such action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.

(z) A licensed operator taking action permitted by paragraph (y) of this section shall, as a minimum, obtain the concurrence of a licensed senior operator prior to taking such action.

3. A new paragraph (c) is added to §50.72 to read as follows:

§50.72 Notification of significant events.

* * * * *

(c) Each licensee licensed under §50.21 or §50.22 shall notify the NRC Operations Center by telephone of emergency circumstances

requiring it to take any protective action that departs from a license condition or a technical specification, as permitted by §50.54(y). When time permits, the notification shall be made before the protective action is taken; otherwise, notification shall be made as soon as possible thereafter. The Commission may require written statements from a licensee concerning its actions after use of this provision of the rule.

Dated at Washington, D. C. this _____ day of _____, 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary of the Commission