



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

The Honorable Richard L. Ottinger, Chairman
Subcommittee on Energy Conservation and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D. C. 20515

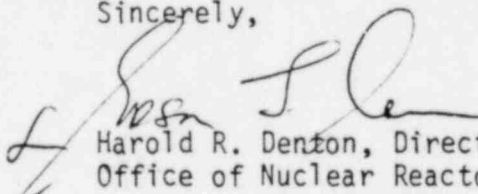
Dear Mr. Chairman:

Enclosed for the information of the Subcommittee is a copy of a Federal Register Notice that proposes to amend the Commission's regulations.

The Commission is proposing a change to 10 CFR 50.54, "Conditions of licenses" and 10 CFR 50.72, "Notification of significant events," to clarify that a licensee may take reasonable action that departs from a facility license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety. Such actions must be promptly reported to the Commission.

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

Sincerely,


Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
Federal Register Notice

cc: The Honorable Carlos Moorhead

NRC PROPOSES TO PERMIT UTILITIES
TO TAKE CERTAIN EMERGENCY ACTIONS

The Nuclear Regulatory Commission is proposing to amend its regulations to permit operators of nuclear power plants to depart from requirements of their operating license conditions or technical specifications in the event of an emergency requiring such action.

The proposed change would clarify that a licensee may take reasonable action that departs from a facility license condition or technical specification in an emergency when such action is immediately needed to protect the public health and safety. In the past, licensees have been reluctant to take actions to respond to an emergency when such actions were restricted by license conditions or technical specifications.

Comments on the proposed amendment to Part 50 of the NRC's regulations should be submitted in writing to the Secretary of the Commission, Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Docketing and Service Branch. Comments should be received by _____.

NUCLEAR REGULATORY COMMISSION
10 CFR PART 50

Applicability of License
Conditions and Technical Specifications
in an Emergency

Version
Enclosure 4

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~~ 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.

ENCLOSURE 1

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 license. 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

a 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 the minimum

~~actions necessary to assure public health and safety, without going~~

~~into further detail as to which other licensee personnel should be~~

~~involved if time permits.~~ The persons responsible for safe operation

licensed
*NUREG 0616 is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H. Street, N.W., Washington, D.C. *insert (A)* *licensed*
that a ~~reactor~~ operator should ~~get~~ the concurrence of senior ~~reactor~~ operator and does not go into further detail as to which additional persons should be involved if time permits or which persons should be involved under other circumstances.

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), the NRC ~~has submitted~~ *has been submitted* to the Office of Management and Budget for its ~~consideration of any potential of new reporting, record-keeping, or information collection requirements contained in the proposed rule.~~ *approval 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.

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 10 CFR Part 50 reads as follows:~~

see insert (B)

~~Authority: Sec. 161i, 68 Stat. 948 [42 U.S.C. 2201(i)].~~

(y) and (z) are

2. ~~New paragraphs~~ 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.

of this section

(z) A licensed ~~operator~~ operator taking action permitted by paragraph (y) shall, as a minimum, obtain the concurrence of a licensed senior ~~operator~~ 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 or 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} ~~do~~ 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

UNITED STATES
NUCLEAR REGULATORY COMMISSION
Insert (A)

*NUREG-0616 is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, N.W., 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.

(clean copy for cut
& paste is attached
for use if desired)

insert (B)
do not retype if possible. cut & paste.

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

Continues to

43 The authority citation for Part 50 ~~ready~~ 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)).

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format

the fission products accumulated at low power into the containment, would allow adequate precautionary actions to be taken to protect the public near the site. On balance, the Commission has concluded that the rule changes are technically justifiable and will enhance the efficiency of the licensing process, without adversely affecting the public health and safety and therefore should be promulgated.

Commissioner Gilinsky's Separate Opinion

I disapprove both parts of the proposed amendment.

One part of the rule provides that no NRC or FEMA findings whatsoever concerning the state or adequacy of offsite emergency preparedness shall be necessary prior to issuance of a low power license. As I stated in my disapproval of the proposed rule, there should be some offsite preparedness, especially if there is to be an extended period of low power operation.

Moreover, emergency preparedness for full power should not be a hurried, last-minute affair. Some of the steps required for full-power should already be in place at the low power stage.

The other part of the rule excludes consideration of emergency exercises in an operating license proceeding, thereby eliminating an opportunity for public participation in this phase of decisionmaking. The exercises never completely follow the plan. And this area happens to be one in which the nuclear plant's neighbors have special competence, greater in some respects than that of NRC or FEMA. Their comments can be particularly useful. These need not be presented in formal hearings but we should have some means to receive and consider them. I would have modified the final rule to provide for such a brief comment period before NRC issuance of an operating license.

I would also note that the Simpson Report shows that FEMA findings will cause delays in only 2 plants: Shoreham and Byron 1. These delays are based on the applicants' construction dates. If NRC estimates are used, this amendment would have no effect on the dates for issuing operating licenses.

Commissioner Ahearne's Additional Views

In response to Commissioner Gilinsky's comment that "the rule provides that no NRC or FEMA findings whatsoever concerning the state or adequacy of offsite emergency preparedness shall be necessary prior to issuance of a low power license," I would note "the NRC review of the

licensees' onsite response mechanism would necessarily include aspects of some offsite elements: communications, notification, assistance agreements with local law enforcement, fire protection, and medical organizations, and the like" (Statement of considerations for this rule at 2).

With respect to his other point concerning consideration in the operating license proceeding, (1) it is important to hold the exercise close to completion of the plant since the operating personnel will then be on site and be able to learn from the experience, and the exercise will be more realistic since hardware and procedures will be closer to completion; and (2) there are public meetings after each drill and the state, local government and other emergency people do participate in these meetings and do provide comments and criticism.

National Environmental Policy Act Consideration

Pursuant to 10 CFR 51.5(d)(3) of the Commission's regulations, an environmental impact appraisal need not be prepared in connection with the subject final amendment because there is no substantive or significant environmental impact.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule changes concern a clarification of the elements and findings necessary for the issuance of an operating license for nuclear power plants licensed pursuant to Section 103 and 104b of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, 2134b. The electric utility companies owning and operating these nuclear power plants are dominant in their service areas, and do not fall within the definition of a small business found 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. Accordingly, there is no significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980.

Paperwork Reduction Act Statement

Pursuant to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the NRC has made a preliminary determination that these rule changes do not impose new recordkeeping, information collection, or reporting requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 552 and 553 of title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 is published as a document subject to codification. These rules are made immediately effective because restrictions on applicants are being relieved.

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.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 reads as follows:

Authority: Secs. 103, 104, 161, 162, 163, 166, 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, 68 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), § 50.54(i) issued under sec. 181, 68 Stat. 949 (42 U.S.C. 2201(i)), §§ 50.70, 50.71, and 50.78 issued under sec. 1010, 68 Stat. 950, as amended; (42 U.S.C. 2201(o)), and the laws referred to in Appendices.

2. In § 50.47, paragraph (a) is revised, the introductory text to paragraph (b) is revised, paragraph (c)(1) is revised, and a new paragraph (d) is added. All revisions to read as follows:

§ 50.47 Emergency plans.

(a)(1) Except as provided in paragraph (d) of this section, no operating license for a nuclear power reactor will be issued unless a finding is made by NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

(2) The NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented, and on the NRC assessment as to whether the applicant's onsite emergency plans are adequate and whether there is