



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CFO ✓

January 5, 1994

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On December 23, 1992 (57 FR 60975), the Commission published a final rule amending 10 CFR Part 52 to reflect the licensing reform provisions contained in the Energy Policy Act of 1992. Although the Commission made these conforming amendments effective immediately, the Commission solicited public comments on whether it had accurately conformed the regulations to the statutory requirements.

After evaluating the one comment received in response to that solicitation, the Commission concluded that no changes to Part 52 were necessary.

Enclosed is a copy of the Federal Register notice in which the Commission explains its decision (58 FR 69220).

Sincerely,

A handwritten signature in cursive script that reads "Linda Portner" with a small flourish underneath.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: As stated

cc: Senator Alan K. Simpson

220070

9403170147 940105
PDR PR
52 57FR60975 PDR

052 | 1



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 5, 1994

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On December 23, 1992 (57 FR 60975), the Commission published a final rule amending 10 CFR Part 52 to reflect the licensing reform provisions contained in the Energy Policy Act of 1992. Although the Commission made these conforming amendments effective immediately, the Commission solicited public comments on whether it had accurately conformed the regulations to the statutory requirements.

After evaluating the one comment received in response to that solicitation, the Commission concluded that no changes to Part 52 were necessary.

Enclosed is a copy of the Federal Register notice in which the Commission explains its decision (58 FR 69220).

Sincerely,

A handwritten signature in cursive script that reads "Linda Porter" followed by a smaller signature that appears to be "for".

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: As stated

cc: Representative Barbara Vucanovich



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 5, 1994

The Honorable Philip Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On December 23, 1992 (57 FR 60975), the Commission published a final rule amending 10 CFR Part 52 to reflect the licensing reform provisions contained in the Energy Policy Act of 1992. Although the Commission made these conforming amendments effective immediately, the Commission solicited public comments on whether it had accurately conformed the regulations to the statutory requirements.

After evaluating the one comment received in response to that solicitation, the Commission concluded that no changes to Part 52 were necessary.

Enclosed is a copy of the Federal Register notice in which the Commission explains its decision (58 FR 69220).

Sincerely,

A handwritten signature in cursive script that reads "Linda Portner for".

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: As stated

cc: Representative Michael Bilirakis



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 5, 1994

The Honorable Tom Bevill, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On December 23, 1992 (57 FR 60975), the Commission published a final rule amending 10 CFR Part 52 to reflect the licensing reform provisions contained in the Energy Policy Act of 1992. Although the Commission made these conforming amendments effective immediately, the Commission solicited public comments on whether it had accurately conformed the regulations to the statutory requirements.

After evaluating the one comment received in response to that solicitation, the Commission concluded that no changes to Part 52 were necessary.

Enclosed is a copy of the Federal Register notice in which the Commission explains its decision (58 FR 69220).

Sincerely,

Linda Portner
for

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: As stated

cc: Representative John Myers



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 5, 1994

The Honorable J. Bennett Johnston, Chairman
Subcommittee on Energy and Water Development
Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On December 23, 1992 (57 FR 60975), the Commission published a final rule amending 10 CFR Part 52 to reflect the licensing reform provisions contained in the Energy Policy Act of 1992. Although the Commission made these conforming amendments effective immediately, the Commission solicited public comments on whether it had accurately conformed the regulations to the statutory requirements.

After evaluating the one comment received in response to that solicitation, the Commission concluded that no changes to Part 52 were necessary.

Enclosed is a copy of the Federal Register notice in which the Commission explains its decision (58 FR 69220).

Sincerely,

A handwritten signature in cursive script that reads "Linda Portner" with "for" written below it.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: As stated

cc: Senator Mark O. Hatfield

ENCLOSURE

Federal Register Notice

2. In § 20.2201, paragraph (a)(2)(ii) is revised to read as follows:

§ 20.2201 Reports of theft or loss of licensed material.

(a) * * *

(2) * * *

(ii) All other licensees shall make reports by telephone to the NRC Operations Center (301-951-0550).

3. In § 20.2202, paragraph (d)(2) is revised to read as follows:

§ 20.2202 Notification of incidents.

(d) * * *

(2) All other licensees shall make the reports required by paragraphs (a) and (b) of this section by telephone to the NRC Operations Center (301-951-0550) and by telegram, mailgram, or facsimile to the Administrator of the appropriate NRC Regional Office listed in appendix D to this part.

Dated at Rockville, Maryland, this 22nd day of December 1993.

For the Nuclear Regulatory Commission,
James M. Taylor,

Executive Director for Operations.

[FR Doc. 93-31844 Filed 12-29-93; 8:45 am]

BILLING CODE 7590-01-P

10 CFR Part 52

RIN 3150-AE42

Combined Licenses; Conforming Amendments; Response to Post-Promulgation Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; comment response.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is addressing the one comment that was received after issuance of the final rule that amended the regulations concerning combined licenses to incorporate changes required by licensing reform legislation. This notice is necessary to inform the public of the NRC's response to this post-promulgation comment.

DATES: The final rule became effective January 22, 1993. Comments were due by February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Grace H. Kim, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301-304-3605.

SUPPLEMENTARY INFORMATION:

Background

In 1992 Congress passed, and the President signed, the Energy Policy Act of 1992 (Pub. L. 102-486, 106 Stat. 2776). Title XXVIII of that Act amended (in part) the nuclear power plant licensing provisions of the Atomic Energy Act. The new legislation largely codified existing NRC regulations in 10 CFR part 52. It also made several changes in the part 52 licensing process.

Accordingly, on December 23, 1992 (57 FR 60975), the Commission issued a final rule amending part 52 to "incorporate[] all the changes to these provisions that are necessary because of the enactment of licensing reform legislation." The Commission found prior public comment on the new amendments unnecessary because the "changes are limited to incorporating the language of [the Energy Policy Act] into the regulations." *Id.* The Commission invited comment by "any interested member of the public who believes that the Commission has not accurately conformed part 52 to the Energy Policy Act." *Id.*

When the Commission issues a final rule without notice and comment it is required, under 10 CFR 2.804(f), to provide a 30-day "post-promulgation" comment period and to publish, in the Federal Register, an evaluation of the comments and any revisions of the rule made as a result of the comments and their evaluation.

Only one comment was received. It was submitted on February 22, 1993, by the Nuclear Management and Resources Council ("NUMARC"). The NUMARC comment, while "agree[ing]" that the part 52 amendments "incorporate the relevant language of title XXVIII of the Energy Policy Act," sought "clarification" of "certain ambiguities" created by the "literal transcription." The NRC is not revising 10 CFR part 52 as a result of the comment and its evaluation.

Analysis of Public Comment

The Commission sees no need to alter the amended part 52; but, pursuant to 10 CFR 2.804(f), offers the following response to the four points made in NUMARC's comment letter.

1. Section 52.99, Inspection During Construction

NUMARC is concerned that the amended language of 10 CFR 52.99, which incorporates section 2801 of title XXVIII of the Energy Policy Act of 1992, will require the Commission itself, rather than the NRC staff, to oversee the ITAAC process (*i.e.*, the inspections,

tests, analyses and acceptance criteria required for plant operation under part 52). The statutory language and the amended regulation state that after issuance of a combined license, "the Commission shall ensure that the required inspections, tests and analyses are performed, as well as find, prior to operation of the facility, that the prescribed acceptance criteria are met." The original part 52 specified that the NRC staff would oversee the ITAAC process.

Statutory or regulatory references to the "Commission" are commonly understood to allow the Commission to act through its staff. Here, NUMARC is correct in its understanding that the change in the wording of § 52.99 to incorporate the language of the Energy Policy Act does not alter the role of the NRC staff. The NRC staff will have principal responsibility for overseeing the ITAAC process. Assigning this day-to-day role to the Commissioners themselves would be entirely unworkable. The Commission itself remains responsible under the amended § 52.99, as it was under the original part 52, for the ultimate finding that the acceptance criteria have been met. See 10 CFR 52.103(g).

2. Section 52.103, Operation Under Combined License

NUMARC requested that the Commission amend 10 CFR 52.103 to specifically incorporate 5 U.S.C. 554(a)(3), a section of the Administrative Procedure Act (APA) exempting certain agency decisions (those resting "solely on inspections, tests, or elections") from formal APA procedural requirements. That provision was cited in the original version of part 52.

In revising § 52.103, the Commission essentially tracked the language used by Congress in the Energy Policy Act. Congress did not cross-reference the APA in that Act, and neither does the revised § 52.103. No cross-reference is necessary to invoke the APA, which unquestionably applies to NRC licensing proceedings under part 52. See 42 U.S.C. 2231. Thus, § 52.103's failure to mention the APA's "inspections or tests" exemption does not prevent applying the exemption in appropriate situations.

3. Section 52.97, Issuance of Combined License

NUMARC agrees that the NRC properly interpreted section 2804 of the Energy Policy Act to make the so-called "Sholly" procedure applicable to combined licenses. The "Sholly" approach allows the Commission to

make an amendment to a combined license immediately effective (*i.e.*, prior to a hearing) if it makes a finding that there are no significant hazards considerations. The Commission altered the language of 10 CFR 52.97 to reflect this express statutory authority. Because NUMARC's comment embraces § 52.97 as sound law, and suggests no change in it, no further response is necessary.

4. Statement of Considerations on § 52.97

NUMARC expresses reservations about language in the statement of considerations on the revised 10 CFR 52.97 stating that the Commission "will not look with favor upon license amendments to the combined license filed shortly before planned operation that will have the effect of undermining standardization or changing the scope of imminent or pending hearings on conformance issues." 57 FR at 60976. NUMARC agrees that the "Sholly provisions should not * * * be used as a subterfuge for eliminating contested issues in a pending § 52.103 hearing on acceptance criteria performance," but fears that the Commission's "overly broad" language may discourage a licensee from applying for a license amendment to permit "a late-occurring minor noncompliance" with an acceptance criterion. NUMARC indicates that reworking the project to avoid the minor noncompliance may be undesirable "from both a cost and safety standpoint."

The Commission finds the language in the statement of considerations appropriate. It merely reiterates the Commission's longstanding commitment to standardization evident throughout the statement of considerations on the original part 52. See 54 FR 15372 (1989). The language does not disfavor all license amendments, only those that would undermine standardization or change the scope of pending hearings. A license amendment to deal with a "minor noncompliance" likely would not fall in those categories.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

Dated at Rockville, Maryland, this 22d day of December 1993.

For the Nuclear Regulatory Commission,

Samuel J. Chalk,

Secretary of the Commission.

[FR Doc. 93-31768 Filed 12-29-93; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-102-AD; Amendment 39-8772; AD 93-25-06]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Over-Wing Escape Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides, that requires modification of the trailing edge panels and the aft flaps. This amendment is prompted by the results of functional tests of over-wing escape slides, which revealed that some slides were damaged when they were deployed across sharp corners on the trailing edge of the wing and the large gaps between the trailing edge panels of the wing. The actions specified by this AD are intended to prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation.

DATES: Effective January 31, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 31, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. **FOR FURTHER INFORMATION CONTACT:** Jayson Claar, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington

98055-4056; telephone (206) 227-2784; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides was published in the Federal Register on August 16, 1993 (58 FR 42513). That action proposed to require modification of the trailing edge panels and the aft flaps.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The manufacturer states that the proposed rule is unwarranted because, contrary to the statement of unsafe condition in the proposal, in all five instances in which sharp corners caused damage to the over-wing escape slides, none of the escape slides was rendered unusable. From that comment, the FAA infers that the commenter is requesting that the proposal be withdrawn. The FAA does not concur. Although there have been no reported cases of unusable escape slides, the potential for escape slides to deploy into an unusable configuration still exists until the sharp corners on the wing are eliminated. Furthermore, in the event of damage to either the lower or the upper inflation chamber, the effectiveness of the slide would be severely reduced since only the remaining chamber would be capable of full inflation. This AD action addresses that potential unsafe condition.

One commenter requests that the proposed 15-month compliance time to accomplish the modification of the trailing edge panels and the aft flaps be shortened to six months. This commenter suggests that the proposed compliance time may be too long to fly with a potential for damaged over-wing escape slides that may delay or impede passengers during an emergency evacuation. The FAA does not concur with the need for a shorter compliance time. In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modifications. The proposed compliance time of 15 months was determined to be appropriate in consideration of these factors.

Two commenters request that the 15-month proposed compliance time be extended to coincide with operators'

CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST

This checklist is to be submitted with each document (or group of Qs/As) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) LA to Sen Luberman

2. TYPE OF DOCUMENT Correspondence Hearings (Qs/As)

3. DOCUMENT CONTROL Sensitive (NRC Only) Non-sensitive

4. CONGRESSIONAL COMMITTEE and SUBCOMMITTEES (if applicable)

_____ Congressional Committee
_____ Subcommittee

5. SUBJECT CODES

(a) _____
(b) _____
(c) _____

6. SOURCE OF DOCUMENTS

(a) _____ 5520 (document name) _____
(b) Scan- (c) _____ Attachments
(d) _____ Rekey (e) _____ Other _____

7. SYSTEM LOG DATES

(a) 2/18/94 Date OCA sent document to CCS
(b) _____ Date CCS receives document
(c) _____ Date returned to OCA for additional information
(d) _____ Date resubmitted by OCA to CCS
(e) _____ Date entered into CCS by _____
(f) _____ Date OCA notified that document is in CCS

8. COMMENTS
