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## RULEMAKING ISSUE (Notation Vote)

June 3, 1994

SECY-94-156

**FOR:** The Commissioners  
**FROM:** James M. Taylor  
Executive Director for Operations  
**SUBJECT:** PROPOSED RULEMAKING PACKAGE FOR 10 CFR 50.36, "TECHNICAL SPECIFICATIONS"

**PURPOSE:**

To obtain Commission approval to publish a proposed rule change to 10 CFR 50.36, "Technical Specifications," for public comment.

**ISSUE:**

Codification of criteria for the content of power reactor technical specifications.

**BACKGROUND:**

On March 30, 1993, the staff presented a draft Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors to the Commission (SECY-93-067) and recommended that the Commission approve publication of the draft final policy statement for public comment. The Commission approved publication of the policy statement in final form without public comment, as noted in the Staff Requirements Memorandum (SRM) issued on

Contacts:  
Christopher I. Grimes, NRR  
504-1161

Nanette Gilles, NRR  
504-1180

SECY NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS MADE AVAILABLE.

94DG100227-XA

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May 25, 1993. The final policy statement was published in the Federal Register on July 23, 1993 (58 FR 39132). In the SRM, the Commission also directed the staff to prepare a rulemaking package to codify the four criteria contained in the final policy statement and to note in the Federal Register notice announcing the policy statement that comments on the policy statement were welcome and that they would be considered and addressed during preparation of the proposed rule. To date, only one comment, which was a general statement of support for the policy statement by a licensee, has been received.

In addition, the Commission said that the staff should begin preparing any regulatory guides that might be needed to implement this rule. The Commission also directed the staff to aggressively explore and pursue possible mechanisms for improving the NRC regulations related to technical specifications, including achieving legal and administrative efficiencies in the processing of amendments to technical specifications. The Commission asked that the staff inform the Commission of its plans in this regard when the rulemaking package was forwarded for Commission review.

#### DISCUSSION:

The Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors established four criteria that define requirements that should be controlled by technical specifications. The policy statement stated that, currently, there is a common understanding between the NRC staff and the industry that the criteria provide a template to develop improved technical specifications. The criteria are being used by licensees to prepare technical specification submittals to the NRC. The Commission concluded that it was appropriate to codify the criteria in a rule that would be consistent with the policy statement but would preserve the voluntary nature of adopting the improved technical specifications. The rule will not require modification of the technical specifications for any plant licensed for operation prior to the effective date of the amendment. The rule will, however, provide an acceptable scope for technical specification limiting conditions for operation for (1) changes to technical specifications for previously licensed plants and (2) technical specifications for plants licensed for operation after the effective date of the amendment to the rule.

Enclosure 1 contains the proposed revised text of 10 CFR 50.36 in comparative form. Enclosure 2 is the proposed Federal Register notice (FRN), which contains a statement of considerations under "Supplementary Information." The statement of considerations gives the history of the development of the four criteria being proposed for inclusion in 10 CFR 50.36. Much of the text of the statement of considerations is taken directly from the final policy statement.

As noted in the FRN, the staff has determined that there will be no significant impact on the environment from this proposed rule and that there is no need to prepare a separate environmental assessment. The criteria being

added to 10 CFR 50.36 are identical to those contained in the final policy statement and have been used by the NRC and the nuclear power industry to define the content of technical specifications since September 1992. The proposed rule does not impose any new requirements, nor does it allow a licensee to change the basic operating envelope for any plant. The proposed rule allows licensees to voluntarily use the criteria to propose the relocation of existing technical specifications that do not meet any of the criteria to licensee-controlled documents.

The staff has determined that a regulatory analysis is not required for this proposed rule. The principal purposes of a regulatory analysis are to help ensure that (1) NRC regulatory decisions made in support of its statutory responsibilities are based on adequate information concerning the need for and consequences of proposed actions, (2) appropriate alternative approaches to regulatory objectives are identified and analyzed, (3) no clearly preferable alternative to the proposed action exists, and (4) proposed actions subject to the backfit rule (10 CFR 50.109) [and not within the exceptions at 10 CFR 50.109(a)(4)] provide a substantial increase in the overall protection of the public health and safety or the common defense and security and that the direct and indirect costs of implementation are justified in view of this substantial increase in protection.<sup>1</sup> The staff believes the intent of the regulatory analysis has been met through the extensive consideration given to the development of the final policy statement and the improved standard technical specifications (STS), both of which involved an opportunity for public comment. The proposed rule does not impose any new requirements but, rather, allows nuclear power reactor licensees to voluntarily use the criteria to propose the relocation of existing technical specifications that do not meet any of the criteria to licensee-controlled documents. The staff will also, as a policy matter, use these criteria to determine whether technical specifications are appropriate to provide continued regulatory control over new requirements or positions that have been justified consistent with the backfit rule. In addition, the criteria being added to 10 CFR 50.36 are identical to those contained in the final policy statement and have been used by the NRC and the nuclear power industry to define the content of technical specifications since September 1992.

The Commission considered the need for and consequences of this proposed action when it made the decision to direct the staff not only to publish the criteria in the final policy statement but also to codify the criteria through rulemaking. Appropriate alternative approaches to this action have been identified and analyzed over the life of the Technical Specifications Improvement Program, beginning with an earlier attempt to define the content of technical specifications through rulemaking. On March 30, 1982, the Commission published a proposed amendment to 10 CFR 50.36 (47 FR 13369). The

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<sup>1</sup> NUREG/BR-0058, Revision 2, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," August 1993

proposed amendment would have revised 10 CFR 50.36 to establish a new system of specifications divided into two general categories. Only those specifications contained in the first general category as technical specifications would have become part of the operating license and would have required prior NRC approval for any changes. Those specifications contained in the second general category would have become supplemental specifications and would not have required prior NRC approval for most changes. The NRC review of the first general category of specifications would have been the same as that currently performed for technical specification changes, which are amendments to the operating license. For the second category, supplemental specifications, the licensee would have been allowed to make changes within specified conditions without prior NRC approval. The NRC would have reviewed these changes when they were made and would have done so in a manner similar to that currently used for reviewing design changes, tests, and experiments performed under the provisions of 10 CFR 50.59. However, because of difficulties with defining criteria for technical specifications and because of other higher priority licensing work, the rule change was deferred.

In February 1987, the Commission published an Interim Policy Statement on Technical Specification Improvements and in July 1993, published the final policy statement. Although the staff suggested using the final policy statement to implement 10 CFR 50.36 as currently written, the Commission was of the view that the four criteria should be codified in a rule. Thus, alternative approaches to regulatory objectives have been identified and analyzed, and the Commission has decided that there is no clearly preferable alternative to codifying the four criteria in a rule. With regard to evaluation of values and impacts of alternatives, the staff believes that in this case, because of the voluntary nature of the proposed rule, there is no difference in the values or impacts of implementing the criteria through use of the final policy statement or through a rule, except that the criteria are more readily available to future users in a rule than in a policy statement.

The fourth purpose of a regulatory analysis is to ensure an adequate backfit analysis of the proposed action. The staff has determined that the backfit rule does not apply to this proposed rule because the amendment in itself does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1). The statement of considerations for the FRN states that, during individual technical specification conversions, the nonvoluntary addition of new requirements from the improved STS to individual plant technical specifications will be evaluated in accordance with the Commission regulations on backfitting (10 CFR 50.109). In summary, the staff believes that the intent of the regulatory analysis has been met and a separate analysis at this time is not needed.

When the Commission directed the staff to codify the four criteria through rulemaking, it also directed the staff to aggressively explore and pursue possible mechanisms for improving the NRC regulations related to technical specifications including achieving legal and administrative efficiencies in the processing of amendments to technical specifications. This proposed rule



is the result, in part, of these efforts. The staff has been and will continue to pursue other methods for achieving administrative efficiencies in the processing of technical specification amendments. Two areas where considerable improvement in efficiency has been realized are in the license amendment screening process and in the ongoing development of line-item improvements.

The staff does not intend to prepare any regulatory guides to implement this proposed rule. The staff believes that the improved STS, the final policy statement, and the statement of considerations for the proposed rule contain all of the guidance necessary for implementation.

Please note that the enclosed proposed rule has not been reviewed by the Advisory Committee on Reactor Safeguards (ACRS) or the Committee to Review Generic Requirements (CRGR). Both committees have, however, reviewed the substance of the proposed rule. The ACRS and the CRGR reviewed the criteria during their involvement with the improved STS and the final policy statement.

The views of the ACRS on the final policy statement were expressed to the Commission in a letter to the Chairman dated June 18, 1993. The ACRS stated in the letter that it believed that the staff needed to provide more detailed guidance on the definition of "significant to public health and safety," as used in Criterion 4 of the final policy statement. The ACRS felt that this additional guidance should appear in the implementing regulatory guide. Because the staff is not planning to prepare any regulatory guides to implement this proposed rule, we intend to solicit comments on this issue when the proposed rule is published in the Federal Register and provide more detailed guidance in the statement of considerations when the final rule is published.

The staff intends to provide the ACRS and the CRGR with a copy of this proposed rulemaking package and to meet with them after the public comment period on the proposed rule to inform them of the substance of the comments and any changes to the proposed rule that the staff recommends on the basis of the comments. The ACRS and the CRGR have agreed to this course of action.

Finally, the staff has prepared letters to the appropriate congressional committees informing them of the proposed rulemaking action, which are contained in Enclosure 3.

This action involves no resource adjustments to the NRC Five Year Plan. The Office of the General Counsel has reviewed this paper and has no legal objection.

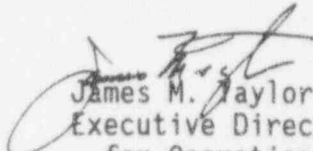
RECOMMENDATION:

That the Commission:

1. Approve the publication of the enclosed proposed rule change to 10 CFR 50.36, "Technical Specifications," for a 75-day comment period.
2. Certify that this rule does not have a significant economic impact on a substantial number of small entities in order to satisfy the requirements of the Regulatory Flexibility Act (5 U.S.C. 605(b)).
3. Note:
  - a. No environmental impact statement or environmental assessment need be prepared in connection with the amendments because there will be no significant impact on the environment from the proposed rule.
  - b. A separate regulatory analysis has not been prepared for this proposed rule because the staff believes the intent of the regulatory analysis has been met.
  - c. A backfit analysis has not been prepared for this proposed rule because the amendment does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).
  - d. That the Subcommittee on Nuclear Regulation of the Senate Committee on Environment and Public Works, the Subcommittee on Energy and Power of the House Committee on Energy and Commerce, and the Subcommittee on Energy and the Environment of the House Committee on Interior and Insular Affairs will be informed of this rulemaking action (Enclosure 3).
  - e. That the proposed rule does not amend information collection requirements subject to the Paperwork Reduction Act. The existing requirements were approved by the Office of Management and Budget.
  - f. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it as required by the Regulatory Flexibility Act.
  - g. That a public announcement will be issued (Enclosure 4).
  - h. That a copy of the proposed rule will be distributed to all affected licensees and other interested persons.

SCHEDULING:

If scheduled on the Commission agenda, the staff recommends that this paper be considered at an open meeting. The staff knows of no specific circumstance that would require Commission action by any particular date in the near future.

  
James M. Taylor  
Executive Director  
for Operations

Enclosures:

1. 10 CFR 50.36 Comparative Text
2. Federal Register Notice
3. Letters to Congress
4. Public Announcement

Commissioners' comments or consent should be provided directly to SECY by COB Thursday, July 21, 1994. Commission staff office comments, if any, should be submitted to the Commissioners NLT July 14, 1994, with an information copy to SECY. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for discussion at an open meeting on July 14, 1994.

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**ENCLOSURE 1**

**10 CFR 50.36 COMPARATIVE TEXT**



§ 50.36 Technical specifications.

- (a) Each applicant for a license authorizing operation of a production or utilization facility shall include in his application proposed technical specifications in accordance with the requirements of this section. A summary statement of the bases or reasons for such specifications, other than those covering administrative controls, shall also be included in the application, but shall not become part of the technical specifications.
- (b) Each license authorizing operation of a production or utilization facility of a type described in § 50.21 or § 50.22 will include technical specifications. The technical specifications will be derived from the analyses and evaluation included in the safety analysis report, and amendments thereto, submitted pursuant to § 50.34. The Commission may include such additional technical specifications as the Commission finds appropriate.
- (c) Technical specifications will include items in the following categories:
  - (1) \* \* \*
  - (2) *Limiting conditions for operation.*

(1) Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specifications until the condition can be met. When a limiting condition for operation of any process step in the system of a fuel reprocessing plant is not met, the licensee shall shut down that part of the operation or follow any remedial action permitted by the technical specifications until the condition can be met. In the case of a nuclear reactor not licensed under § 50.21(b) or § 50.22 of this part or fuel reprocessing plant, the licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the nuclear reactor or the fuel reprocessing plant. In the case of nuclear power reactors licensed under § 50.21(b) or § 50.22, the licensee shall notify the Commission if required by § 50.72 and shall submit a Licensee Event Report to the Commission as required by § 50.73. In this case, licensees shall retain records associated with preparation of a Licensee Event Report for a period of three years following issuance of the report. For events which do not require a Licensee Event Report, the licensee shall retain each record as required by the technical specifications.

(ii) A technical specification limiting condition for operation of a nuclear reactor must be established for each item meeting one or more of the following criteria:

(A) Criterion 1. Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

(B) Criterion 2. A process variable, design feature, or operating restriction that is an initial condition of a design basis accident or transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

(C) Criterion 3. A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

(D) Criterion 4. A structure, system, or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety.

(iii) A licensee is not required to modify technical specifications that are included in any license issued before [insert the effective date of this document] to satisfy the criteria in paragraph (c)(2)(ii) of this section. However, for technical specification amendments a licensee proposes after [insert the effective date of this document], the criteria in paragraph (c)(2)(ii) of this section provide an acceptable scope for limiting conditions for operation.

(3) *Surveillance requirements.* Surveillance requirements are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions of for operation will be met.

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**ENCLOSURE 2**

**PROPOSED FEDERAL REGISTER NOTICE**

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AF06

Technical Specifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to technical specifications for nuclear power reactors. The proposed rule would codify criteria for determining the content of technical specifications. These criteria were developed in recognition of the overly broad use of technical specifications to impose requirements, diverting both NRC and licensee attention from the more important requirements in these documents to the extent that it has resulted in an adverse but unquantifiable impact on safety. Each licensee covered by these regulations may voluntarily use the criteria as a basis to propose the relocation of existing technical specifications that do not meet any of the criteria from the facility license to licensee-controlled documents. The voluntary conversion of current technical specifications in this manner is expected to produce an improvement in the safety of nuclear power plants through a reduction in unnecessary plant transients and more efficient use of NRC and industry resources.

DATE: Comment period expires (75 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSEES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

Copies of comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher I. Grimes, Chief, Technical Specifications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: (301) 504-1161.

SUPPLEMENTARY INFORMATION:

#### Background

Section 182a. of the Atomic Energy Act of 1954 (Act), as amended (42 U.S.C. 2232), mandates the inclusion of technical specifications in licenses for the operation of production and utilization facilities. The Act



requires that technical specifications include information concerning the amount, kind, and source of special nuclear material, the place of use, and the specific characteristics of the facility. That section also states that technical specifications shall contain information the Commission requires through regulation to enable it to find that the utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection of public health and safety. Finally, that section requires technical specifications to be made a part of any license issued.

The Commission promulgated § 50.36, "Technical Specifications," which implements Section 182a. of the Atomic Energy Act on December 17, 1968 (33 FR 18610). This rule delineates requirements for determining the contents of technical specifications. Technical specifications set forth the specific characteristics of the facility and the conditions for its operation that are required to provide adequate protection of the health and safety of the public. Specifically, § 50.36 requires the following:

Each license authorizing operation of a production or utilization facility of a type described in § 50.21 or § 50.22 will include technical specifications. The technical specifications will be derived from the analyses and evaluation included in the safety analysis report, and amendments thereto, submitted pursuant to § 50.34. The Commission may include such additional technical specifications as the Commission finds appropriate.

Technical specifications cannot be changed by licensees without prior NRC approval. However, since 1969, there has been a trend toward including in technical specifications not only those requirements derived from the analyses and evaluation included in the safety analysis report but also essentially all other Commission requirements governing the operation of nuclear power reactors. This extensive use of technical specifications was due in part to a lack of well-defined criteria (in either the body of the rule or in some other regulatory document) for what should be included in technical specifications. This use has contributed to the volume of technical specifications and to the several-fold increase in the number of license amendment applications to effect changes to the technical specifications since 1969. It has diverted both NRC staff and licensee attention from the more important requirements in these documents to the extent that it has resulted in an adverse but unquantifiable impact on safety.

On March 30, 1982 (47 FR 13369), the NRC published in the Federal Register a proposed amendment to Part 50. The proposed rule would have revised § 50.36, "Technical Specifications," to establish a new system of specifications divided into two general categories. Only those specifications contained in the first general category as technical specifications would have become part of the operating license and would have required prior NRC approval for any changes. Those specifications contained in the second general category would have become supplemental specifications and would not have required prior NRC approval for most changes. The NRC review of the first general category of specifications would have been the same as that currently performed for technical specification changes, which are amendments

to the operating license. For the second category, supplemental specifications, the licensee would have been allowed to make changes within specified conditions without prior NRC approval. The NRC would have reviewed these changes when they were made and would have done so in a manner similar to that currently used for reviewing design changes, tests, and experiments performed under the provisions of § 50.59. Because of difficulties with defining the criteria for dividing the technical specifications into the two categories of the proposed rule and because of other higher priority licensing work, the proposed amendment was deferred.

In the early 1980s, the nuclear industry and the NRC staff began studying whether the existing system of establishing technical specification requirements for nuclear power plants needed improvement. During this time frame, an NRC task group known as the Technical Specifications Improvement Project (TSIP) and a Subcommittee of the Atomic Industrial Forum's (AIF) Committee on Reactor Licensing and Safety performed two studies of this issue.<sup>1</sup> The overall conclusion of these studies was that many improvements in the scope and content of technical specifications were needed and that a joint NRC and industry program should be initiated to implement these improvements.

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<sup>1</sup>SECY-86-10, "Recommendations for Improving Technical Specifications," dated January 13, 1986, contains both "Recommendations for Improving Technical Specifications," NRC Technical Specifications Improvement Project, September 30, 1985, and "Technical Specifications Improvements," AIF Subcommittee on Technical Specifications Improvements, October 1, 1985.

Both groups made specific recommendations which are summarized as follows:

(1) The NRC should adopt the criteria for defining the scope of technical specifications proposed in the AIF and TSIP reports. Those criteria should then be used by the NRC and each of the nuclear steam supply system vendor owners groups to completely rewrite and streamline the existing Standard Technical Specifications (STS). This process would result in the transfer of many requirements from control by technical specification requirements to control by other mechanisms [e.g., the final safety analysis report (FSAR), operating procedures, quality assurance (QA) plan] that would not require a license amendment or prior NRC approval when changes were needed. The new STS should include greater emphasis on human factors principles in order to make the text of the STS clearer and easier to understand. The new STS should also provide improvements to the bases section of technical specifications, which gives the purpose for each requirement in the specification.

(2) A parallel program of short-term improvements in both the scope and substance of the existing technical specifications should be initiated in addition to developing new STS as stated in Recommendation (1).

On February 6, 1987 (52 FR 3788), the NRC published in the Federal Register for public comment an Interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors containing proposed criteria in response to Recommendation (1). These criteria were generally derived from the criteria proposed in the AIF and TSIP reports and were modified slightly on the basis of discussions between the NRC staff and the

industry. The public comment period for the interim policy statement expired on March 23, 1987.

The criteria were developed with the intention that they would apply to limiting conditions for operation (LCOs). The NRC staff believed that the safety limits needed to remain as is in the technical specifications because of their more direct link to protection of the physical barriers that guard against the uncontrolled release of radioactivity. At the time the criteria were developed, the industry did not wish to address administrative controls and design features in the effort to improve the STS. Later, however, both the industry and the NRC staff realized that it would be beneficial to include upgraded administrative controls and design features in the improved STS, and these were handled separately from the application of the criteria to the LCOs.

The NRC has developed a program for short-term improvements as described in Recommendation (2). These are known as "line-item" improvements and are generic improvements developed and promulgated by the NRC staff for voluntary adoption by licensees.

Subsequently, improved vendor-specific STS were developed and issued by the NRC in September 1992. The improved STS were published as the following NRC reports:

- NUREG-1430, "Standard Technical Specifications, Babcock and Wilcox Plants"



- NUREG-1431, "Standard Technical Specifications, Westinghouse Plants"
- NUREG-1432, "Standard Technical Specifications, Combustion Engineering Plants"
- NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4"
- NUREG-1434, "Standard Technical Specifications, General Electric Plants, BWR/6"

Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by calling (202) 275-2060 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5825 Port Royal Road, Springfield, VA 22161.

These improved STS were the result of extensive technical meetings and discussions among the NRC staff, industry owners groups, vendors, and the Nuclear Management and Resources Council (NUMARC).

Finally, on July 22, 1993 (58 FR 39132), the Commission published a Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, which incorporated experience and lessons learned since publication of the interim policy statement. The interim policy statement identified three criteria to be used to define which of the current technical specification requirements should be retained or included in technical specifications and which LCOs could be relocated to licensee-controlled documents, as follows:

Criterion 1: Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

Criterion 2: A process variable, design feature, or operating restriction that is an initial condition of a design basis accident or transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

Criterion 3: A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

The interim policy statement also stated that, in addition to structures, systems, and components captured by the three criteria, it was the Commission's policy that licensees retain in the technical specifications LCOs for a specified list of systems that operating experience and probabilistic safety assessment had generally shown to be important to public health and safety. In the final policy statement, the Commission retained this thought as a fourth criterion to capture those requirements that operating experience or probabilistic safety assessment show to be significant to public health and safety. The final policy statement also addressed comments received on the interim policy statement and described the Commission's intent with regard to use of the criteria and their codification through rulemaking.

The Commission believes that amending § 50.36 to include the four criteria contained in the final policy statement could codify a viable, potentially safety-enhancing and cost-saving method for technical specification improvement. The Commission encourages licensees to use the improved STS as the basis for plant-specific technical specifications. As stated in the final policy statement, the Commission will place the highest priority on requests based on the criteria for individual license amendments that are used to evaluate all of the LCOs for an individual plant to determine which LCOs should be included in the technical specifications. Related surveillance requirements and actions would be retained for each LCO that remains in the technical specifications. Each LCO, action, and surveillance requirement should have supporting bases.

In addition, the Commission will also entertain requests to adopt portions of the improved STS, even if the licensee does not adopt all STS improvements. These portions will include all related requirements and will normally be developed as line-item improvements by the NRC staff. The Commission encourages all licensees who submit technical specification related submittals based on these criteria to emphasize human factors principles.

LCOs that do not meet any of the criteria, and their associated actions and surveillance requirements, may be proposed for relocation from the technical specifications to licensee-controlled documents, such as the FSAR. The criteria may be applied to either standard or custom technical specifications. The Commission will also consider the criteria in evaluating future generic requirements for inclusion in technical specifications.

During individual technical specification conversions, a backfit analysis will be performed in cases of nonvoluntary addition of new requirements from the improved STS to individual plant technical specifications, unless the staff-suggested additional changes are needed to make the changes requested by the licensee acceptable from the standpoint of adequate protection or compliance with NRC regulations, in which case the request may be denied without the additional items.

The Commission requests comments on the criteria being proposed for inclusion in § 50.36 and particularly, on Criterion 4 and what guidelines the Commission should use in defining "significant to public health and safety."

#### Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission regulations in Subpart A of Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and would not degrade the environment in any way. Therefore, the Commission concludes that there will be no significant impact on the environment from this proposed rule. This discussion constitutes the environmental assessment and finding of no significant impact for this proposed rule; a separate assessment has not been prepared.

## Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

## Regulatory Analysis

The Commission has determined that a regulatory analysis is not required for this proposed rule. The Commission believes the intent of the regulatory analysis has been met through the extensive consideration given to the development of the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors and the improved STS, both of which involved an opportunity for public comment. The criteria being added to § 50.36 are identical to those contained in the final policy statement and have been used by the NRC and the nuclear power industry to define the content of technical specifications since September 1992. The criteria will continue to be used even if this proposed rule is not adopted. The proposed rule does not impose any requirements but, rather, allows nuclear power reactor licensees to voluntarily use the criteria to relocate existing technical specifications that do not meet any of the criteria to licensee-controlled documents. The NRC staff also uses these criteria to determine whether technical specifications are appropriate to provide continued regulatory control over new requirements or positions that have been justified consistent with the backfit rule.



The Commission considered the need for and consequences of this proposed action when it made the decision to not only publish the criteria in the final policy statement but also to codify the criteria through rulemaking. Appropriate alternative approaches to this action have been identified and analyzed over the life of the Technical Specifications Improvement Program, beginning with an earlier attempt to define the content of technical specifications through rulemaking. As described in the background discussion, the Commission published a proposed amendment to § 50.36 (47 FR 13369) on March 30, 1982. However, because of difficulties with defining criteria for technical specifications and because of other higher priority licensing work, the rule change was deferred. In February 1987, the Commission published an interim policy statement on Technical Specification Improvements and in July 1993, published the final policy statement. During review of the final policy statement, the Commission concluded that the four criteria should be codified in a rule. Thus, alternative approaches to regulatory objectives have been identified and analyzed, and the Commission has decided that there is no clearly preferable alternative to codifying the four criteria in a rule. With regard to evaluation of values and impacts of alternatives, the Commission believes there is no difference in the values or impacts of implementing the criteria through use of the final policy statement or through a rule, except that the criteria are more readily available to future users in a rule than in a policy statement.

## Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 [5 U.S.C. 605(b)], the Commission certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" as given in the Regulatory Flexibility Act or the Small Business Size Standards in regulations issued by the Small Business Administration at 13 CFR Part 121.

## Backfit Analysis

The NRC has determined that the backfit rule, § 50.109, does not apply to this proposed rule and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in § 50.109(a)(1).

## List of Subjects in 10 CFR Part 50

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

For the reasons given in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974,

as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to Part 50.

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58-50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.8i also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.36, paragraphs (c)(2) and (3) are revised to read as follows:

§ 50.36 Technical specifications.

\* \* \* \* \*

(c)\* \* \*

(2) Limiting conditions for operation.

(i) Limiting conditions for operation are the lowest functional capability or performance levels of equipment required for safe operation of the facility. When a limiting condition for operation of a nuclear reactor is not met, the licensee shall shut down the reactor or follow any remedial action permitted by the technical specifications until the condition can be met. When a limiting condition for operation of any process step in the system of a fuel reprocessing plant is not met, the licensee shall shut down that part of the operation or follow any remedial action permitted by the technical specifications until the condition can be met. In the case of a nuclear reactor not licensed under § 50.21(b) or § 50.22 of this part or fuel reprocessing plant, the licensee shall notify the Commission, review the matter, and record the results of the review, including the cause of the condition and the basis for corrective action taken to preclude recurrence. The licensee shall retain the record of the results of each review until the Commission terminates the license for the nuclear reactor or the fuel reprocessing plant. In the case of nuclear power reactors licensed under

§ 50.21(b) or § 50.22, the licensee shall notify the Commission if required by § 50.72 and shall submit a Licensee Event Report to the Commission as required by § 50.73. In this case, licensees shall retain records associated with preparation of a Licensee Event Report for a period of three years following issuance of the report. For events which do not require a Licensee Event Report, the licensee shall retain each record as required by the technical specifications.

(ii) A technical specification limiting condition for operation of a nuclear reactor must be established for each item meeting one or more of the following criteria:

(A) Criterion 1. Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

(B) Criterion 2. A process variable, design feature, or operating restriction that is an initial condition of a design basis accident or transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

(C) Criterion 3. A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a design basis accident or transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.



(D) Criterion 4. A structure, system, or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety.

(iii) A licensee is not required to modify technical specifications that are included in any license issued before [insert the effective date of this document] to satisfy the criteria in paragraph (c)(2)(ii) of this section. However, for technical specification amendments a licensee proposes after [insert the effective date of this document], the criteria in paragraph (c)(2)(ii) of this section provide an acceptable scope for limiting conditions for operation.

(3) Surveillance requirements. Surveillance requirements are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met.

\* \* \* \* \*

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

FOR THE NUCLEAR REGULATORY COMMISSION.

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Samuel J. Chilk,  
Secretary of the Commission.

**ENCLOSURE 3**

**LETTERS TO CONGRESS**



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

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

Dear Mr. Chairman:

In the near future, the Nuclear Regulatory Commission intends to publish in the Federal Register the enclosed proposed amendment to the Commission rules in 10 CFR Part 50. The amendment, if adopted, would establish criteria for determining the content of technical specifications for nuclear power reactors. The proposed rule does not impose any requirements but, rather, allows licensees to voluntarily use the criteria as a basis to propose the relocation of existing technical specifications that do not meet any of the criteria from the facility license to licensee-controlled documents. The Commission is issuing the proposed rule for public comment.

Sincerely,

Dennis K. Rathbun, Director  
Office of Congressional Affairs

Enclosure:  
Federal Register Notice

cc: Representative Michael Bilirakis



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

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

Dear Mr. Chairman:

In the near future, the Nuclear Regulatory Commission intends to publish in the Federal Register the enclosed proposed amendment to the Commission rules in 10 CFR Part 50. The amendment, if adopted, would establish criteria for determining the content of technical specifications for nuclear power reactors. The proposed rule does not impose any requirements but, rather, allows licensees to voluntarily use the criteria as a basis to propose the relocation of existing technical specifications that do not meet any of the criteria from the facility license to licensee-controlled documents. The Commission is issuing the proposed rule for public comment.

Sincerely,

Dennis K. Rathbun, Director  
Office of Congressional Affairs

Enclosure:  
Federal Register Notice

cc: Representative Barbara Vucanovich



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

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

Dear Mr. Chairman:

In the near future, the Nuclear Regulatory Commission intends to publish in the Federal Register the enclosed proposed amendment to the Commission rules in 10 CFR Part 50. The amendment, if adopted, would establish criteria for determining the content of technical specifications for nuclear power reactors. The proposed rule does not impose any requirements but, rather, allows licensees to voluntarily use the criteria as a basis to propose the relocation of existing technical specifications that do not meet any of the criteria from the facility license to licensee-controlled documents. The Commission is issuing the proposed rule for public comment.

Sincerely,

Dennis K. Rathbun, Director  
Office of Congressional Affairs

Enclosure:  
Federal Register Notice

cc: Senator Alan K. Simpson



**ENCLOSURE 4**

**PUBLIC ANNOUNCEMENT**

NRC PROPOSES TO AMEND REQUIREMENTS GOVERNING  
TECHNICAL SPECIFICATIONS FOR NUCLEAR POWER PLANTS

The Nuclear Regulatory Commission is proposing to amend its requirements governing the content of technical specifications for licensed nuclear power plants.

Technical specifications set forth the specific characteristics of a nuclear power plant and the conditions for its operation that are required to provide assurance that the public health and safety will be protected. Technical specifications cannot be changed without the approval of the NRC staff.

Historically, technical specifications have been based on information contained in a licensee's Final Safety Analysis Report but, more recently, have expanded to include essentially all other Commission requirements governing the operation of nuclear power plants.

This broad use of technical specifications to impose requirements has diverted both NRC staff and licensee attention from the more important requirements in the technical specifications and may have had an adverse but unquantifiable impact on safety.

Accordingly, the Commission is proposing to add four criteria to its regulations to govern what should be included in technical specifications as limiting conditions for operation. Limiting conditions for operation, if exceeded, require shut down of a facility or remedial action until the condition can be met.

As proposed, the four criteria would be the same as those listed in the Commission's Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors issued in July last year. They are:

instruments used to detect, and indicate in a reactor control room, significant abnormal degradation of the reactor coolant system pressure boundary;

a variable, design feature or operating restriction that is an initial condition of an accident or transient analysis that assumes the failure of or presents a challenge to a barrier designed to prevent the release of radioactivity;

a structure, system or component which functions to mitigate an accident or transient that assumes the failure of or presents a challenge to the integrity of a barrier to prevent the release of radioactivity; and

a structure, system or component which operating experience or a probabilistic safety assessment has shown to be significant to public health and safety.

As proposed, a licensee could ask that limiting conditions for operation that do not meet any of the criteria, and their associated actions and surveillance requirements, be relocated to other licensee-controlled documents such as the Final Safety Analysis Report.

Written comments on the criteria, and criterion four in particular, should be received by (date). They should be addressed to the Secretary of the Commission, Nuclear Regulatory

Commission, Washington, D.C. 20555, Attention: Docketing and  
Service Branch.