

United States Senate

WASHINGTON, DC 20510

July 17, 1985

Mr. Charles M. Trammell III
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Trammell:

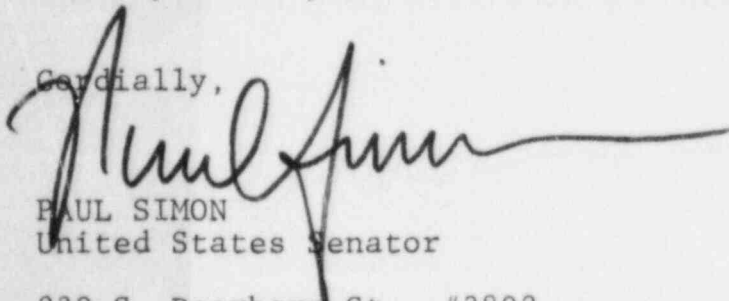
I am interested in learning about the 1983 regulation 10 CFR 50.54 (x) and (y) which permits the operator of a nuclear reactor to deviate from technical specifications during an emergency situation. What is the background of this regulation? Why has it been imposed?

It is my understanding that the technical specifications of a nuclear generating plant are derived from the physical design of the plant itself. Any deviation from the technical specifications would seem to be illadvised even in an emergency situation.

Your comment concerning this regulation would be appreciated. Please respond to my Chicago office, Attn: John Weinberger.

Thank you for your attention to this matter.

Cordially,



PAUL SIMON
United States Senator

230 S. Dearborn St., #3892
Chicago, IL 60604
(312) 353-4952

PS/jrw

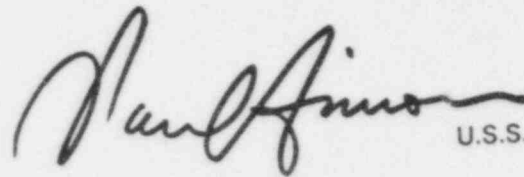
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United States Senate

WASHINGTON, DC 20510

OFFICIAL BUSINESS

 U.S.S.

Mr. Charles M. Trammell III
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

AUG 05 1985

The Honorable Paul Simon
United States Senator
230 South Dearborn Street, #3892
Chicago, Illinois 60604

Dear Senator Simon:

This is in response to your letter of July 17, 1985 to Mr. Trammell of the NRC staff which asked several questions about the NRC rule that permits deviations from the technical specifications for a nuclear plant under certain emergency circumstances.

We have enclosed a copy of the Statement of Consideration which was published with the rule when it was issued. We believe you will find the enclosure fully responsive to your questions.

Sincerely,

(Signed) T. A. Rehm

William J. Dircks
Executive Director for Operations

Enclosure:
Statement of Consideration

Distribution:
Central File
NRC & LPDRs w/cpy of incoming
EDO #000852
EDO Reading
HDenton/DEisenhut
ORB#3 Green ticket file (w/copy of incoming)
OELD
OCA (3)
SECY(3)
WDircks
LMulley
GLainas/DNottingham
HThompson/MJambor
CTrammell w/cy of incoming
PKreutzer
ORB#3 Rdg
*See previous white for concurrences

ORB#3:DL	ORB#3:DL	ORB#3:DL	OELD	AD:OR:DL	NRR
PKreutzer	CTrammell;ef	EButcher	GCunningham	GLainas	DEisenhut
7/26/85	7/26/85	7/26/85	7/31/85	7/30/85	/ /85

D:NRR	OCA	EDO
HDenton		WDircks
/ /85	/ /85	/ /85

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submit reports of plan changes which do not decrease safeguards effectiveness to NRC regional offices. This action is being taken as part of the implementation of the NRC regional licensing program under which responsibility for certain categories of action has been delegated to Regional Administrators. The amendments are necessary to inform current or prospective licensees of current NRC practice and organization.

EFFECTIVE DATE: February 9, 1983.

FOR FURTHER INFORMATION CONTACT: Martin Levy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, Telephone: (301) 427-4024.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is amending its regulations concerning the reviews of reactor security and contingency plan changes, transportation physical protection plan changes, and special nuclear material facility security, contingency and material control and accounting program changes where the plan or program changes do not decrease effectiveness. These amendments are being made to reflect current NRC practices and assigned responsibilities under the NRC regional licensing program. The revised provisions, 10 CFR 50.54(p), and 70.32 (c), (d), (e), and (g), specify that notification as to changes to certain security and contingency plans and material control and accounting programs in Regions I and II be sent to the cognizant regional office commencing February 9, 1983. As of October 1, 1983, notification as to changes in certain security and contingency plans and material control and accounting programs in all regions will be sent to the cognizant regional offices. With respect to the specific actions delegated to the Regional Administrators, the revisions to the regulations are intended to state exactly which functions are now assigned to the Regional Administrators as their total responsibility under the Commission's regionalization program and when these responsibilities will become effective.

The basic delegation of authority for the Regional Administrators is contained in NRC Manual Chapter 0128. The general delegation requires supplementation, however, as specific functions are transferred to the Regional Offices. The amendments contained herein meet the requirement for such supplementation.

The changes to 10 CFR 50.54(p) and 70.32 (c), (d), (e), and (g) are nonsubstantive amendments. They simply change the entity to which certain notices are sent and the dates that the change becomes effective.

Since the amendments relate to minor

matters of agency organization and procedure, notice of proposed rulemaking and public procedure thereon are unnecessary under 5 U.S.C. 553. For the same reason good cause exists for making the amendments effective upon publication in the Federal Register without the customary thirty day notice.

Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved under OMB clearance numbers 3150-0011, 3150-0009.

List of Subjects

10 CFR Part 50

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

10 CFR Part 70

Hazardous materials—Transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Parts 50 and 70, are published as a document subject to codification.

48 FR 8256

Published 2/28/83

10 CFR Parts 50 and 70

Regional Licensing Reviews

Correction

In FR Doc. 83-3326 beginning on page 5886 in the issue of Wednesday, February 9, 1983, make the following corrections.

On page 5887, first column, § 70.32 (c)(1), eighth line from the bottom, "discribed" should read "described"; second column, paragraph (d), sixth line, "§ 80.22(g)" should read "§ 70.22(g)"; third column, paragraph (g), eighth line, "licensees" should read "licensee"; and in the sixth line from the bottom, "70.30(g)" should read "73.30(g)".

48 FR 13966

Published 4/1/83.

Effective 6/1/83

10 CFR Part 50

Applicability of License; Conditions and Technical Specifications in an Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify that all Part 50 licensees may take reasonable action that departs from a license condition or technical specification in an emergency when this action is immediately needed to protect the public health and safety. The rule is being issued 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 rule allows this action to be taken in emergency circumstances.

EFFECTIVE DATE: June 1, 1983.

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 rule clarifies the regulations in 10 CFR Part 50 by providing that a licensee may take reasonable action that departs from a license condition or a technical specification in an emergency when such action is immediately needed to protect the public health and safety.

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

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

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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 failure or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances. In addition, an accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the licensee. Also, performance of routine surveillance testing, which might fall due during an emergency, could either divert the attention of the operating crew from the emergency or cause the loss of equipment needed for proper protective action.

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

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

The rule follows the recommendation in NUREG-0616, "Report of Special Review Group, Office of Inspection and Enforcement on Lesson Learned from Three Mile Island"¹ the NRC establish and announce a firm policy regarding the applicability of the license under emergency circumstances, with certain exceptions discussed below.

(a) The 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 certainly does not disagree with the general concept that the most senior licensee personnel available at the time should be involved, the rule specifies that such action shall be approved by a licensed senior operator as a minimum 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. The persons responsible for safe operation of the facility are already identified in the facility license and implementing procedures.

(b) The 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 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.

¹ NUREG-0616 is available for inspection and copying for a fee at NRC Public Document Room, 1717 H Street, NW., Washington, D.C. Copies may be purchased through the NRC/GPO Sales Program by using a GPO Deposit Account, MasterCard or Visa by calling the NRC/GPO Sales Office on (301) 482-9630 or by sending a check or money order payable to Superintendent of Documents to: Sales Manager, 056, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Purchase orders are acceptable from Federal, state, and local government offices only.

The rule was published as a proposed rule in the Federal Register on August 18, 1982 (47 FR 35996). A sixty-day comment period expired on October 18, 1982.

A total of thirty-seven responses were received, representing thirty-nine organizations or persons. Respondents included: licensees of power reactors (24), individuals (5), research reactor licensees (2), nuclear steam system suppliers (2), professional organizations (2); and one response each from: a law firm, a State, a labor union, and an architectural-engineering firm. Copies of comments received by the Commission in response to the notice of proposed rulemaking may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. (file PR-50, 47 FR 35996).

The vast majority of the commenters (thirty-seven) were in favor of the rule. Many expressed enthusiastic support. Only two commenters believed that the rule should not be adopted. Eight commenters believed the rule should be issued as proposed. However, as a result of comments received by others, some changes have been made, as discussed below.

One commenter pointed out the similarity between the proposed rule and the so-called "General Prudential Rule" contained in both the International Regulations for Preventing Collisions at Sea, 1972, and the Inland Navigational Rules Act of 1980. The rule is identical in each and states:

In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from those rules necessary to avoid immediate danger. (Rule 2(b)).

The commenter added that a Commanding Officer (of a naval ship) is permitted to deviate from written rules to the extent necessary to save his ship, and that there is ample precedent for the proposed NRC rule.

It is also very similar to a rule of the Federal Aviation Administration (FAA) governing the operation of aircraft, 14 CFR 91.3, which states that "[i]n an emergency requiring immediate action, the pilot in command may deviate from any rule . . . to the extent necessary to meet that emergency. Each pilot in command who deviates from a rule . . . shall, upon the request of the Administrator, send a written report of that deviation to the Administrator."

The Commission had both the General Prudential Rule and the FAA rule in mind when it framed the proposed NRC rule. Further, it is clear that Congress

believes that licensees have authority to take whatever action is necessary to respond to emergencies involving an imminent threat to public health and safety. H.R. Rep. No. 97-884, 97th Cong., 2d Sess. 38 (1982). The rule codifies and clarifies this authority.

In addition to seeking the usual public comment as to any aspects of the proposed rule, the Federal Register Notice of the proposed rule stated:

The proposed rule does not provide significant guidance to Part 50 licensees for identifying those situations in which deviations from licensee 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 licensee conditions or technical specifications in these types of situations. The Commission particularly solicits comments on these two areas.

Thirty-four comments were received in response to this request, and most were strongly opposed to the Commission providing additional deviation guidance or enforcement standards.

As for deviation guidance, one comment, which was opposed to such, was typical: "[w]e do not believe that it is feasible to provide detailed guidance as to when deviations are permissible. The whole purpose of the proposed amendments is to provide flexibility in situations that cannot be anticipated. Any effort to provide more detailed standards is likely to defeat that purpose by unintentionally excluding a situation in which a deviation is necessary or appropriate."

The Commission agrees with this comment, and feels that any attempt to define in more detail the precise circumstances under which a deviation is permissible is bound to exclude a circumstance where deviation might be entirely appropriate. Whereas the conditions under which a deviation is allowed are not described at length, nevertheless, the deviation criteria are quite specific: the licensee must be faced with an emergency situation in which compliance with the license is posing a barrier to effective protective action and rapid protective action is needed.

Based on the foregoing and public comments received, no changes have been made to the rule with respect to the conditions under which the rule may be invoked.

In response to the Commission's request for comments on the need for enforcement standards, most commenters stated that the matter of enforcement should be based on the

specific circumstances surrounding the event, and that enforcement standards would be difficult to frame for the unusual circumstances under which the rule might be used. One commenter pointed out that enforcement standards would tend to limit actions that could or could not be taken, and thereby serve to provide deviation guidance which most felt was inappropriate (discussed above).

The Commission has concluded that enforcement standards, as such, are not needed. The Commission agrees that providing such standards would tend to define the circumstances under which the rule could be used (deviation guidance). As discussed above, this has been judged to be undesirable.

The rule does, however, contain implicit enforcement guidance. The NRC would review a licensee's use of the rule to determine answers to the following types of questions:

- Did the licensee have to act immediately to avert possible adverse consequences to the public health and safety?
- Was adequate or equivalent protective action that is consistent with the license immediately apparent?
- Was the action reasonable? Based on information available at the time did it serve to protect the public health and safety? Did the licensee deviate from its license only to the extent necessary to meet the emergency?
- Was there time for an amendment of the license to be approved by NRC?

Answers to these questions should be adequate to determine if the rule had been violated. Specific enforcement action would have to depend on the specific circumstances.

Ten persons made comments to the effect that overly critical reviews or overzealous enforcement action following the use of the rule would cause licensees to hesitate to use the rule. The Commission agrees with these comments. The Commission recognizes that a licensee will need to exercise judgment in applying the rule, and in its after-the-fact review, it may not agree in every instance with the licensee's actions. However, enforcement action for a violation of the rule will not be taken unless a licensee's action was unreasonable considering all the relevant circumstances having to do with the emergency.

The Federal Register Notice for the proposed rule contained additional comments of Commissioner Gilinsky, in which he stated:

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.

Nineteen comments were received in response to this request and most all agreed that such a decision should be made, as a minimum, by a licensed senior operator. Those opposed expressed the opinion that such concurrence should not be mandatory or that higher concurrences should be obtained if possible.

A minor clarifying change to the rule has been made in response to these comments and another which stated that the rule was confusing because the first paragraph of the proposed rule discussed *licensees* and the second discussed *operators*. The second paragraph now reads: "Licensee action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator." This change makes it clear that if a licensee takes emergency action allowed by paragraph (x), such action must be approved by, at least, a licensed senior operator acting for the licensee. Under the provision, any licensed senior operator (licensed for the unit involved) would be sufficient. However, as one commenter pointed out, more senior licensee personnel would probably be available. If so, the decision to depart from the license in an emergency would pass to them (as higher authorities in the chain of command). If, however, an emergency requiring prompt action should occur on a back shift, no licensee representative higher in the chain of command is likely to be available. To require other approvals could serve to defeat the purpose of the rule.

One commenter stated that the rule should provide for deviations from the NRC regulations as well as license conditions and technical specifications. This was intended, and the language of numerous comments indicated that this was understood. Each license issued is subject to all applicable rules, regulations and orders of the Commission. This is stated in the license itself and also in 10 CFR 50.54(h) as a condition of the license. Therefore, the rule does apply to NRC rules, regulations and orders as well.

Three comments were received regarding the applicability of the rule in situations where damage to the facility or injury to personnel might be involved. For the reasons discussed above, the rule does not contain explicit deviation guidance or examples. Nevertheless, the threat of injury to personnel would be an appropriate example. As for invoking the rule to prevent damage to the facility

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or machinery, it would depend on the specific circumstances of the emergency. The rule does not apply to machinery or the facility, *per se*, but would apply if such damage is tied to a possible adverse effect on public health and safety.

One commenter suggested that the Commission emphasize the permissive nature of the rule by explaining that its use is totally discretionary, that licensees need not invoke it even in an emergency, and that failure to invoke the rule would not constitute a violation of NRC requirements for which an enforcement action may be brought. This comment was not accepted. Whereas the language of the rule is permissive in nature, licensees are responsible for operating their facilities in such a manner as to protect the public health and safety. If, in an emergency, protective action is needed (and no action consistent with the license that can provide adequate or equivalent protection is immediately apparent) the licensee would be obliged to take the protective action that deviates from the license. Viewed in this sense, use of the rule is not optional.

One commenter suggested that the provisions of the rule be placed in the facility operating license indicating that Technical Specifications are not intended to prevent a licensee from undertaking, during the course of emergency conditions, any action necessary to protect public health and safety. No changes to the rule have been made in response to this comment. First, as stated above, the rule applies not only to technical specifications, but any NRC requirement, e.g., regulations, rules, license conditions, or technical specifications. Second, it is not necessary to place the statement into the operating license itself, since it is being published as a rule in § 50.54, "Conditions of licenses." By so doing, the rule applies to all operating licenses.

A commenter suggested that a policy statement to the same safe effect would be better than a rule. This was not accepted, since the Commission believes that it would be inappropriate to issue a policy statement in conflict with a rule.

Only two commenters were not in favor of the rule. One comment stated that the rule would be abused. The Commission disagrees with this comment, noting that several safeguards have been built into the rule to prevent this. First, licensees must notify the NRC by telephone when the rule is used. Second, the NRC may require written statements from a licensee concerning its actions after use of the rule. One commenter agreed that these provisions

provided adequate safeguards against abuse.

Two commenters suggested that written notice to the Commission of use of the rule should be mandatory. It is highly likely that a written report would be required since most violations of the license or technical specifications do require a written report. To the extent that the Commission's information needs related to the event are not met, the Commission would require additional information, as provided for in the rule. A mandatory written report is therefore not deemed essential.

One commenter stated that the reporting requirement "When time permits, the notification (of the use of the rule) shall be made before the protective action is taken * * *" was inconsistent with the use of the term "immediately needed" language of the rule, and implied that a prior report should not be required at all. In response, the Commission notes that all power reactors have dedicated telephones connected directly to the NRC Operations Center at all times, and, under most circumstances under which the rule might need to be used, the licensee would be in contact with the NRC Operations Center anyway. Therefore, most emergency situations would allow time to make a prior notification to the NRC, considering the ease and speed that it could be done. Second, while the term "immediately" as used in the rule is not defined, it could involve a period of hours as the emergency develops, and certainly a period of time that is too short to permit NRC approval of a change to the license before the action must be taken (as stated earlier). Therefore, there is not necessarily an inconsistency between the prior report and the timing of the need for action. If, however, there is no time for a prior report, it is not required.

One commenter stated that the rule constituted an admission that NRC rules and licenses are not adequate; another stated that the rule shows that NRC rules have become unwieldy. The Commission does not agree with these comments, and believes the issuance of the rule will result in increased protection to the public health and safety. Any attempt to define NRC requirements to cover all conceivable circumstances, as discussed earlier, is bound to fail, and would result in unwieldy regulations.

One comment noted an apparent inconsistency between the rule (which admits that unanticipated circumstances can occur during the course of emergencies that may call for responses different from any considered during the

course of licensing) and the admissibility of intervenor contentions that are denied litigation at a hearing on the basis that such scenarios are incredible or so unlikely as to be barred from litigation.

The Commission, in issuing this rule, takes no position whatever as to the merit of any contention involving emergency circumstances that could be postulated at a nuclear facility. Rather, the rule assumes that special circumstances have occurred which makes use of the rule necessary to protect the public health and safety.

A commenter suggested that use of the rule be tied to the "general emergency" emergency classification, i.e., that the rule should apply only when a general emergency has been declared by the licensee. This comment was not accepted. Emergencies can develop rapidly. Use of the rule should not be encumbered by administrative prerequisites.

A commenter proposed that a large fee—up to one million dollars—be charged for use of the rule. The thrust of the comment was to ensure that violation of NRC requirements be carefully considered. Another suggested holding hearings after the emergency to determine justifications for use of the rule and to see if other actions could have been taken. As stated earlier, the Commission believes that the rule contains adequate safeguards. Therefore these comments were not adopted.

Finally, a commenter suggested that an evaluation be made of each instance in which a deviation was made to prevent possible future need for similar deviations. The Commission will review each use of the rule both to confirm that the intent of the rule was satisfied and also to analyze the circumstances leading to the emergency to see what permanent corrective action may be appropriate.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the rule as considered by the Commission. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. Single copies of the analysis may be obtained from Charles M. Trammell III, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Telephone (301) 492-7389.

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Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget, OMB approval No. 3150-0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. These regulations affect licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. The amendment serves to clarify the applicability of license conditions and technical specifications in an emergency. The clarification would be incorporated as a condition of the respective operating licenses, and would require no action on the part of licensees. Accordingly, there is no new, significant economic impact on these licensees; nor do these licensees fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

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

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, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

10 CFR Part 50

Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations to specify standards for determining whether requested amendments to operating licenses for certain nuclear power reactors and testing facilities involve no significant hazards considerations. These standards will help NRC in its evaluations of these requests. Research reactors are not covered. However, the Commission is reviewing the extent to which and the way such standards should be applied to research reactors.

EFFECTIVE DATE: May 6, 1983. The Commission specifically requests comments on this interim final rule by May 6, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the documents discussed in this notice and of the comments received on the proposed rule and interim final rules may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to Public Law 97-415, NRC must promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards considerations, (b) criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for public comment on any such determination, and (c) procedures for consultation on any such determination with the State in which the facility involved is located.

Proposed regulations to specify standards for determining whether amendments to operating licenses or construction permits for facilities licensed under §§ 50.21(b) or 50.22 (including testing facilities) involve no

significant hazards considerations (item (a) above) were published for comment in the *Federal Register* by the Commission on March 28, 1980 (45 FR 20491). Since the Commission rarely issues amendments to construction permits and has never issued a construction permit amendment involving a significant hazards consideration, it has decided not to apply these standards to amendments to construction permits and to handle these case-by-case. This is in keeping with the legislation which applies only to operating license amendments. Additionally, these standards will not now be applied to research reactors. The Commission is currently reviewing whether and how it should apply these or similar standards to research reactors. In sum, the interim final rule will amend Part 50 of the Commission's regulations to establish standards for determining whether an amendment to an operating license involves no significant hazards consideration.

The rule takes account not only of the new legislation but also the public comments received on the proposed rule. For the sake of clarity, affected prior legislation as well as the Commission's regulations and practice are discussed as background information.

Simultaneously with the promulgation of these standards in § 50.92, the Commission is publishing an interim final rule which contains criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for and public comment on a determination about whether an amendment to an operating license involves a significant hazards consideration (item (b) above). This rule also specifies procedures for consultation on any such a determination with the State in which the facility involved is located (item (c) above). The rule appears separately in the *Federal Register*.

These regulations are issued as final, though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the *Federal Register*. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

Background

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public

➤ 48 FR 14864
Published 4/6/83
Effective Date: 5/6/83.

The Commission specifically requests comments on this interim final rule by 5/6/83. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.



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

EDO PRINCIPAL CORRESPONDENCE CONTROL

FROM:

SEN. PAUL SIMON

DUE: 08/06/85

EDO CONTROL: 000852

DOC DT: 07/17/85

FINAL REPLY:

TO:

CHARLES M. TRAMMELL

FOR SIGNATURE OF:

** GREEN **

SECY NO:

EXECUTIVE DIRECTOR

DESC:

ROUTING:

REQUEST INFO RE 10 CFR 50.54 (X) AND (Y) WHICH
ALLOWS OPERATOR OF NUCLEAR REACTOR TO DEVIATE
FROM TECHNICAL SPECIFICATIONS DURING AN EMERGENCY
SITUATION

MINOGUE
TAYLOR
GCUNNINGHAM
OCA
SECY

DATE: 07/23/85

ASSIGNED TO: NRR

CONTACT: DENTON

SPECIAL INSTRUCTIONS OR REMARKS:

REPLY TO CHICAGO, ILLINOIS OFFICE.
MARK ENVELOPE ATTN: JOHN WEINBERGER.

NRR RECEIVED: 07/23/85

ACTION: DL, H. THOMPSON

ROUTING: DENTON/EISENHUT
PPAS

47 FR
13966
50-5C-80
Butcher
Trammell
Rev J.
7/24/85
cm

United States Senate
WASHINGTON, DC 20510

July 17, 1985

Mr. Charles M. Trammell III
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Trammell:

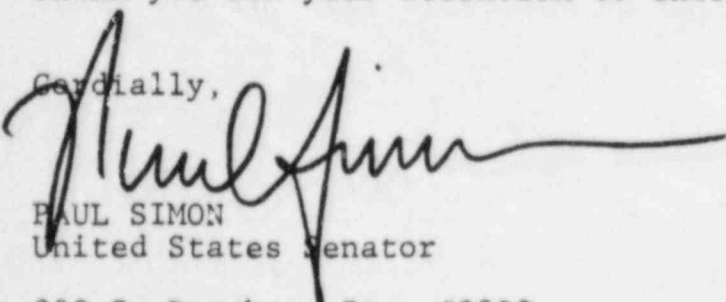
I am interested in learning about the 1983 regulation 10 CFR 50.54 (x) and (y) which permits the operator of a nuclear reactor to deviate from technical specifications during an emergency situation. What is the background of this regulation? Why has it been imposed?

It is my understanding that the technical specifications of a nuclear generating plant are derived from the physical design of the plant itself. Any deviation from the technical specifications would seem to be illadvised even in an emergency situation.

Your comment concerning this regulation would be appreciated. Please respond to my Chicago office, Attn: John Weinberger.

Thank you for your attention to this matter.

Cordially,



PAUL SIMON
United States Senator

230 S. Dearborn St., #3892
Chicago, IL 60604
(312) 353-4952

PS/jrw

EDO --- 000852

AUG 05 1985

The Honorable Paul Simon
United States Senator
230 South Dearborn Street, #3892
Chicago, Illinois 60604

Dear Senator Simon:

This is in response to your letter of July 17, 1985 to Mr. Trammell of the NRC staff which asked several questions about the NRC rule that permits deviations from the technical specifications for a nuclear plant under certain emergency circumstances.

We have enclosed a copy of the Statement of Consideration which was published with the rule when it was issued. We believe you will find the enclosure fully responsive to your questions.

Sincerely,

(Signed) T. A. Rehm

William J. Dircks
Executive Director for Operations

Enclosure:
Statement of Consideration

Distribution:
Central File
NRC & LPDRs w/cpy of incoming
EDO #000852
EDO Reading
HDenton/DEisenhut
ORB#3 Green ticket file (w/copy of incoming)
OELD
OCA (3)
SECY(3)
WDircks
LMulley
GLainas/DNottingham
HThompson/MJambor
CTrammell w/cy of incoming
PKreutzer
ORB#3 Rdg
*See previous white for concurrences

ORB#3:DL	ORB#3:DL	ORB#3:DL	OELD	AD:OR:DL	NRR
PKreutzer	CTrammell;ef	EButcher	GCunningham	GLainas	DEisenhut
7/26/85	7/26/85	7/26/85	7/31/85	7/30/85	/ /85
D:NRR	OCA	EDO			
HDenton		WDircks			
/ /85	/ /85	/ /85			

PART 50 • STATEMENTS OF CONSIDERATION

submit reports of plan changes which do not decrease safeguards effectiveness to NRC regional offices. This action is being taken as part of the implementation of the NRC regional licensing program under which responsibility for certain categories of action has been delegated to Regional Administrators. The amendments are necessary to inform current or prospective licensees of current NRC practice and organization.

EFFECTIVE DATE: February 9, 1983.

FOR FURTHER INFORMATION CONTACT: Martin Levy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC. Telephone: (301) 427-4024.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is amending its regulations concerning the reviews of reactor security and contingency plan changes, transportation physical protection plan changes, and special nuclear material facility security, contingency and material control and accounting program changes where the plan or program changes do not decrease effectiveness. These amendments are being made to reflect current NRC practices and assigned responsibilities under the NRC regional licensing program. The revised provisions, 10 CFR 50.54(p), and 70.32 (c), (d), (e), and (g), specify that notification as to changes to certain security and contingency plans and material control and accounting programs in Regions I and II be sent to the cognizant regional office commencing February 9, 1983. As of October 1, 1983, notification as to changes in certain security and contingency plans and material control and accounting programs in all regions will be sent to the cognizant regional offices. With respect to the specific actions delegated to the Regional Administrators, the revisions to the regulations are intended to state exactly which functions are now assigned to the Regional Administrators as their total responsibility under the Commission's regionalization program and when these responsibilities will become effective.

The basic delegation of authority for the Regional Administrators is contained in NRC Manual Chapter 0128. The general delegation requires supplementation, however, as specific functions are transferred to the Regional Offices. The amendments contained herein meet the requirement for such supplementation.

The changes to 10 CFR 50.54(p) and 70.32 (c), (d), (e), and (g) are nonsubstantive amendments. They simply change the entity to which certain notices are sent and the dates that the change becomes effective.

Since the amendments relate to minor

matters of agency organization and procedure, notice of proposed rulemaking and public procedure thereon are unnecessary under 5 U.S.C. 553. For the same reason good cause exists for making the amendments effective upon publication in the Federal Register without the customary thirty day notice.

Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved under OMB clearance numbers 3150-0011, 3150-0009.

List of Subjects

10 CFR Part 50

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

10 CFR Part 70

Hazardous materials—Transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Parts 50 and 70, are published as a document subject to codification.

48 FR 8256

Published 2/28/83

10 CFR Parts 50 and 70

Regional Licensing Reviews

Correction

In FR Doc. 83-3326 beginning on page 5886 in the issue of Wednesday, February 9, 1983, make the following corrections.

On page 5887, first column, § 70.32 (c)(1), eighth line from the bottom, "discribed" should read "described"; second column, paragraph (d), sixth line, "\$ 80.22(g)" should read "\$ 70.22(g)"; third column, paragraph (g), eighth line, "licensees" should read "licensee"; and in the sixth line from the bottom, "70.30(g)" should read "73.30(g)".

48 FR 13966

Published 4/1/83.

Effective 6/1/83

10 CFR Part 50

Applicability of License; Conditions and Technical Specifications in an Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify that all Part 50 licensees may take reasonable action that departs from a license condition or technical specification in an emergency when this action is immediately needed to protect the public health and safety. The rule is being issued 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 rule allows this action to be taken in emergency circumstances.

EFFECTIVE DATE: June 1, 1983.

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 rule clarifies the regulations in 10 CFR Part 50 by providing that a licensee may take reasonable action that departs from a license condition or a technical specification in an emergency when such action is immediately needed to protect the public health and safety.

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

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

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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 failure or coincident accidents where plant emergency procedures could be in conflict, or not applicable to the circumstances. In addition, an accident can take a course different from that visualized when the emergency procedure was written, thus requiring a protective response at variance with a procedure required to be followed by the licensee. Also, performance of routine surveillance testing, which might fall due during an emergency, could either divert the attention of the operating crew from the emergency or cause the loss of equipment needed for proper protective action.

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

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

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

(a) The 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 certainly does not disagree with the general concept that the most senior licensee personnel available at the time should be involved, the rule specifies that such action shall be approved by a licensed senior operator as a minimum 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. The persons responsible for safe operation of the facility are already identified in the facility license and implementing procedures.

(b) The 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 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.

¹ NUREG-0616 is available for inspection and copying for a fee at NRC Public Document Room, 1717 H Street, NW., Washington, D.C. Copies may be purchased through the NRC/GPO Sales Program by using a GPO Deposit Account, MasterCard or Visa by calling the NRC/GPO Sales Office on (301) 492-6630 or by sending a check or money order payable to Superintendent of Documents to: Sales Manager 066, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Purchase orders are acceptable from Federal, state, and local government offices only.

The rule was published as a proposed rule in the Federal Register on August 18, 1982 (47 FR 35996). A sixty-day comment period expired on October 18, 1982.

A total of thirty-seven responses were received, representing thirty-nine organizations or persons. Respondents included: licensees of power reactors (24), individuals (5), research reactor licensees (2), nuclear steam system suppliers (2), professional organizations (2); and one response each from: a law firm, a State, a labor union, and an architectural-engineering firm. Copies of comments received by the Commission in response to the notice of proposed rulemaking may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. (file PR-50, 47 FR 35996).

The vast majority of the commenters (thirty-seven) were in favor of the rule. Many expressed enthusiastic support. Only two commenters believed that the rule should not be adopted. Eight commenters believed the rule should be issued as proposed. However, as a result of comments received by others, some changes have been made, as discussed below.

One commenter pointed out the similarity between the proposed rule and the so-called "General Prudential Rule" contained in both the International Regulations for Preventing Collisions at Sea, 1972, and the Inland Navigational Rules Act of 1980. The rule is identical in each and states:

In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from those rules necessary to avoid immediate danger. (Rule 2(b)).

The commenter added that a Commanding Officer (of a naval ship) is permitted to deviate from written rules to the extent necessary to save his ship, and that there is ample precedent for the proposed NRC rule.

It is also very similar to a rule of the Federal Aviation Administration (FAA) governing the operation of aircraft, 14 CFR 91.3, which states that "[i]n an emergency requiring immediate action, the pilot in command may deviate from any rule . . . to the extent necessary to meet that emergency. Each pilot in command who deviates from a rule . . . shall, upon the request of the Administrator, send a written report of that deviation to the Administrator."

The Commission had both the General Prudential Rule and the FAA rule in mind when it framed the proposed NRC rule. Further, it is clear that Congress

believes that licensees have authority to take whatever action is necessary to respond to emergencies involving an imminent threat to public health and safety. H.R. Rep. No. 97-884, 97th Cong., 2d Sess. 38 (1982). The rule codifies and clarifies this authority.

In addition to seeking the usual public comment as to any aspects of the proposed rule, the Federal Register Notice of the proposed rule stated:

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.

Thirty-four comments were received in response to this request, and most were strongly opposed to the Commission providing additional deviation guidance or enforcement standards.

As for deviation guidance, one comment, which was opposed to such, was typical: "[w]e do not believe that it is feasible to provide detailed guidance as to when deviations are permissible. The whole purpose of the proposed amendments is to provide flexibility in situations that cannot be anticipated. Any effort to provide more detailed standards is likely to defeat that purpose by unintentionally excluding a situation in which a deviation is necessary or appropriate."

The Commission agrees with this comment, and feels that any attempt to define in more detail the precise circumstances under which a deviation is permissible is bound to exclude a circumstance where deviation might be entirely appropriate. Whereas the conditions under which a deviation is allowed are not described at length, nevertheless, the deviation criteria are quite specific: the licensee must be faced with an emergency situation in which compliance with the license is posing a barrier to effective protective action and rapid protective action is needed.

Based on the foregoing and public comments received, no changes have been made to the rule with respect to the conditions under which the rule may be invoked.

In response to the Commission's request for comments on the need for enforcement standards, most commenters stated that the matter of enforcement should be based on the

specific circumstances surrounding the event, and that enforcement standards would be difficult to frame for the unusual circumstances under which the rule might be used. One commenter pointed out that enforcement standards would tend to limit actions that could or could not be taken, and thereby serve to provide deviation guidance which most felt was inappropriate (discussed above).

The Commission has concluded that enforcement standards, as such, are not needed. The Commission agrees that providing such standards would tend to define the circumstances under which the rule could be used (deviation guidance). As discussed above, this has been judged to be undesirable.

The rule does, however, contain implicit enforcement guidance. The NRC would review a licensee's use of the rule to determine answers to the following types of questions.

a. Did the licensee have to act immediately to avert possible adverse consequences to the public health and safety?

b. Was adequate or equivalent protective action that is consistent with the license immediately apparent?

c. Was the action reasonable? Based on information available at the time did it serve to protect the public health and safety? Did the licensee deviate from its license only to the extent necessary to meet the emergency?

d. Was there time for an amendment of the license to be approved by NRC?

Answers to these questions should be adequate to determine if the rule had been violated. Specific enforcement action would have to depend on the specific circumstances.

Ten persons made comments to the effect that overly critical reviews or overzealous enforcement action following the use of the rule would cause licensees to hesitate to use the rule. The Commission agrees with these comments. The Commission recognizes that a licensee will need to exercise judgment in applying the rule, and in its after-the-fact review, it may not agree in every instance with the licensee's actions. However, enforcement action for a violation of the rule will not be taken unless a licensee's action was unreasonable considering all the relevant circumstances having to do with the emergency.

The Federal Register Notice for the proposed rule contained additional comments of Commissioner Gilinsky, in which he stated:

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.

Nineteen comments were received in response to this request and most all agreed that such a decision should be made, as a minimum, by a licensed senior operator. Those opposed expressed the opinion that such concurrence should not be mandatory or that higher concurrences should be obtained if possible.

A minor clarifying change to the rule has been made in response to these comments and another which stated that the rule was confusing because the first paragraph of the proposed rule discussed *licensees* and the second discussed *operators*. The second paragraph now reads: "Licensee action permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator." This change makes it clear that if a licensee takes emergency action allowed by paragraph (x), such action must be approved by, at least, a licensed senior operator acting for the licensee. Under the provision, any licensed senior operator (licensed for the unit involved) would be sufficient. However, as one commenter pointed out, more senior licensee personnel would probably be available. If so, the decision to depart from the license in an emergency would pass to them (as higher authorities in the chain of command). If, however, an emergency requiring prompt action should occur on a back shift, no licensee representative higher in the chain of command is likely to be available. To require other approvals could serve to defeat the purpose of the rule.

One commenter stated that the rule should provide for deviations from the NRC regulations as well as license conditions and technical specifications. This was intended, and the language of numerous comments indicated that this was understood. Each license issued is subject to all applicable rules, regulations and orders of the Commission. This is stated in the license itself and also in 10 CFR 50.54(h) as a condition of the license. Therefore, the rule does apply to NRC rules, regulations and orders as well.

Three comments were received regarding the applicability of the rule in situations where damage to the facility or injury to personnel might be involved. For the reasons discussed above, the rule does not contain explicit deviation guidance or examples. Nevertheless, the threat of injury to personnel would be an appropriate example. As for invoking the rule to prevent damage to the facility

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or machinery, it would depend on the specific circumstances of the emergency. The rule does not apply to machinery or the facility, *per se*, but would apply if such damage is tied to a possible adverse effect on public health and safety.

One commenter suggested that the Commission emphasize the permissive nature of the rule by explaining that its use is totally discretionary, that licensees need not invoke it even in an emergency, and that failure to invoke the rule would not constitute a violation of NRC requirements for which an enforcement action may be brought. This comment was not accepted. Whereas the language of the rule is permissive in nature, licensees are responsible for operating their facilities in such a manner as to protect the public health and safety. If, in an emergency, protective action is needed (and no action consistent with the license that can provide adequate or equivalent protection is immediately apparent) the licensee would be obliged to take the protective action that deviates from the license. Viewed in this sense, use of the rule is not optional.

One commenter suggested that the provisions of the rule be placed in the facility operating license indicating that Technical Specifications are not intended to prevent a licensee from undertaking, during the course of emergency conditions, any action necessary to protect public health and safety. No changes to the rule have been made in response to this comment. First, as stated above, the rule applies not only to technical specifications, but any NRC requirement, e.g., regulations, rules, license conditions, or technical specifications. Second, it is not necessary to place the statement into the operating license itself, since it is being published as a rule in § 50.54, "Conditions of licenses." By so doing, the rule applies to all operating licenses.

A commenter suggested that a policy statement to the same safe effect would be better than a rule. This was not accepted, since the Commission believes that it would be inappropriate to issue a policy statement in conflict with a rule.

Only two commenters were not in favor of the rule. One comment stated that the rule would be abused. The Commission disagrees with this comment, noting that several safeguards have been built into the rule to prevent this. First, licensees must notify the NRC by telephone when the rule is used. Second, the NRC may require written statements from a licensee concerning its actions after use of the rule. One commenter agreed that these provisions

provided adequate safeguards against abuse.

Two commenters suggested that written notice to the Commission of use of the rule should be mandatory. It is highly likely that a written report would be required since most violations of the license or technical specifications do require a written report. To the extent that the Commission's information needs related to the event are not met, the Commission would require additional information, as provided for in the rule. A mandatory written report is therefore not deemed essential.

One commenter stated that the reporting requirement "When time permits, the notification (of the use of the rule) shall be made before the protective action is taken * * *" was inconsistent with the use of the term "immediately needed" language of the rule, and implied that a prior report should not be required at all. In response, the Commission notes that all power reactors have dedicated telephones connected directly to the NRC Operations Center at all times, and, under most circumstances under which the rule might need to be used, the licensee would be in contact with the NRC Operations Center anyway. Therefore, most emergency situations would allow time to make a prior notification to the NRC, considering the ease and speed that it could be done. Second, while the term "immediately" as used in the rule is not defined, it could involve a period of hours as the emergency develops, and certainly a period of time that is too short to permit NRC approval of a change to the license before the action must be taken (as stated earlier). Therefore, there is not necessarily an inconsistency between the prior report and the timing of the need for action. If, however, there is no time for a prior report, it is not required.

One commenter stated that the rule constituted an admission that NRC rules and licenses are not adequate; another stated that the rule shows that NRC rules have become unwieldy. The Commission does not agree with these comments, and believes the issuance of the rule will result in increased protection to the public health and safety. Any attempt to define NRC requirements to cover all conceivable circumstances, as discussed earlier, is bound to fail, and would result in unwieldy regulations.

One comment noted an apparent inconsistency between the rule (which admits that unanticipated circumstances can occur during the course of emergencies that may call for responses different from any considered during the

course of licensing) and the admissibility of intervenor contentions that are denied litigation at a hearing on the basis that such scenarios are incredible or so unlikely as to be barred from litigation.

The Commission, in issuing this rule, takes no position whatever as to the merit of any contention involving emergency circumstances that could be postulated at a nuclear facility. Rather, the rule assumes that special circumstances have occurred which makes use of the rule necessary to protect the public health and safety.

A commenter suggested that use of the rule be tied to the "general emergency" emergency classification, i.e., that the rule should apply only when a general emergency has been declared by the licensee. This comment was not accepted. Emergencies can develop rapidly. Use of the rule should not be encumbered by administrative prerequisites.

A commenter proposed that a large fee—up to one million dollars—be charged for use of the rule. The thrust of the comment was to ensure that violation of NRC requirements be carefully considered. Another suggested holding hearings after the emergency to determine justifications for use of the rule and to see if other actions could have been taken. As stated earlier, the Commission believes that the rule contains adequate safeguards. Therefore these comments were not adopted.

Finally, a commenter suggested that an evaluation be made of each instance in which a deviation was made to prevent possible future need for similar deviations. The Commission will review each use of the rule both to confirm that the intent of the rule was satisfied and also to analyze the circumstances leading to the emergency to see what permanent corrective action may be appropriate.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the rule as considered by the Commission. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. Single copies of the analysis may be obtained from Charles M. Trammell III, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Telephone (301) 492-7389.

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Paperwork Reduction Act Statement

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget; OMB approval No. 3150-0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities. These regulations affect licensees that own and operate nuclear utilization facilities licensed under sections 103 and 104 of the Atomic Energy Act of 1954, as amended. The amendment serves to clarify the applicability of license conditions and technical specifications in an emergency. The clarification would be incorporated as a condition of the respective operating licenses, and would require no action on the part of licensees. Accordingly, there is no new, significant economic impact on these licensees; nor do these licensees fall within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

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

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, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 50 are published as a document subject to codification.

10 CFR Part 50

Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: Pursuant to Public Law 97-415, NRC is amending its regulations to specify standards for determining whether requested amendments to operating licenses for certain nuclear power reactors and testing facilities involve no significant hazards considerations. These standards will help NRC in its evaluations of these requests. Research reactors are not covered. However, the Commission is reviewing the extent to which and the way such standards should be applied to research reactors.

EFFECTIVE DATE: May 6, 1983. The Commission specifically requests comments on this interim final rule by May 6, 1983. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of the documents discussed in this notice and of the comments received on the proposed rule and interim final rules may be examined in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

Introduction

Pursuant to Public Law 97-415, NRC must promulgate, within 90 days of enactment, regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards considerations, (b) criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for public comment on any such determination, and (c) procedures for consultation on any such determination with the State in which the facility involved is located.

Proposed regulations to specify standards for determining whether amendments to operating licenses or construction permits for facilities licensed under §§ 50.21(b) or 50.22 (including testing facilities) involve no

significant hazards considerations (item (a) above) were published for comment in the Federal Register by the Commission on March 28, 1980 (45 FR 20491). Since the Commission rarely issues amendments to construction permits and has never issued a construction permit amendment involving a significant hazards consideration, it has decided not to apply these standards to amendments to construction permits and to handle these case-by-case. This is in keeping with the legislation which applies only to operating license amendments. Additionally, these standards will not now be applied to research reactors. The Commission is currently reviewing whether and how it should apply these or similar standards to research reactors. In sum, the interim final rule will amend Part 50 of the Commission's regulations to establish standards for determining whether an amendment to an operating license involves no significant hazards consideration.

The rule takes account not only of the new legislation but also the public comments received on the proposed rule. For the sake of clarity, affected prior legislation as well as the Commission's regulations and practice are discussed as background information.

Simultaneously with the promulgation of these standards in § 50.92, the Commission is publishing an interim final rule which contains criteria for providing or, in emergency situations, for dispensing with prior notice and reasonable opportunity for and public comment on a determination about whether an amendment to an operating license involves a significant hazards consideration (item (b) above). This rule also specifies procedures for consultation on any such a determination with the State in which the facility involved is located (item (c) above). The rule appears separately in the Federal Register.

These regulations are issued as final, though in interim form, and comments will be considered on them. They will become effective 30 days after publication in the Federal Register. Accordingly, interested persons who wish to comment are encouraged to do so at the earliest possible time, but not later than 30 days after publication, to permit the fullest consideration of their views.

Background

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public

➤ 48 FR 14864
Published 4/6/83
Effective Date: 5/6/83.

The Commission specifically requests comments on this interim final rule by 5/6/83. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.



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

EDO PRINCIPAL CORRESPONDENCE CONTROL

FROM:

SEN. PAUL SIMON

DUE: 08/06/85

EDO CONTROL: 000852
DOC DT: 07/17/85
FINAL REPLY:

TO:

CHARLES M. TRAMMELL

FOR SIGNATURE OF:

** GREEN **

SECY NO:

EXECUTIVE DIRECTOR

DESC:

ROUTING:

REQUEST INFO RE 10 CFR 50.54 (X) AND (Y) WHICH
ALLOWS OPERATOR OF NUCLEAR REACTOR TO DEVIATE
FROM TECHNICAL SPECIFICATIONS DURING AN EMERGENCY
SITUATION

MINOGUE
TAYLOR
GCUNNINGHAM
OCA
SECY

DATE: 07/23/85

ASSIGNED TO: NRR

CONTACT: DENTON

SPECIAL INSTRUCTIONS OR REMARKS:

REPLY TO CHICAGO, ILLINOIS OFFICE.
MARK ENVELOPE ATTN: JOHN WEINBERGER.

NRR RECEIVED: 07/23/85
ACTION: DL, H. THOMPSON

Scatchfield *Ador*

ROUTING: DENTON/EISENHUT
PPAS

*Butcher
Trammell*

*Recd.
7/24/85
cmr*

*47 FR
13966
50-5C-80*

PAUL SIMON
ILLINOIS

COMMITTEES:
LABOR AND HUMAN RESOURCES
JUDICIARY
RULES AND ADMINISTRATION

United States Senate

WASHINGTON, DC 20510

July 17, 1985

Mr. Charles M. Trammell III
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Trammell:

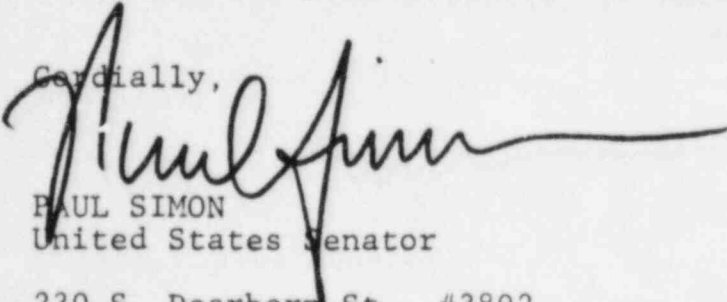
I am interested in learning about the 1983 regulation 10 CFR 50.54 (x) and (y) which permits the operator of a nuclear reactor to deviate from technical specifications during an emergency situation. What is the background of this regulation? Why has it been imposed?

It is my understanding that the technical specifications of a nuclear generating plant are derived from the physical design of the plant itself. Any deviation from the technical specifications would seem to be illadvised even in an emergency situation.

Your comment concerning this regulation would be appreciated. Please respond to my Chicago office, Attn: John Weinberger.

Thank you for your attention to this matter.

Cordially,



PAUL SIMON
United States Senator

230 S. Dearborn St., #3892
Chicago, IL 60604
(312) 353-4952

PS/jrw

EDO --- 000852