

While this rule continues in effect restrictions limiting the amount of Natural (sun-dried) Seedless raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and the final percentages, the order specifies methods to make available additional raisins to handlers by requiring sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, and authorizing sales of reserve raisins under certain conditions.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal is met by the establishment of a final percentage which releases 100 percent of the computed trade demand and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to section 989.54(a) of the order, the Committee met on August 15, 1994, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. As specified in section 989.154, the desirable carryout for each varietal type shall be equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one half of October. If the prior year's shipments are limited because of crop conditions, the total shipments during that period of time during one of the three years preceding the prior crop year may be used. In accordance with these provisions, the Committee computed and announced a

1994-95 trade demand of 294,422 tons for Natural (sun-dried) Seedless raisins.

As required under section 989.54(b) of the order, the Committee met on October 5, 1994, and computed and announced a preliminary crop estimate and preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins which released 65 percent of the trade demand since the field price had not been established. The preliminary crop estimate and preliminary free and reserve percentages were as follows: 404,677 tons, and 47 percent free and 53 percent reserve. The Committee authorized the Committee staff to modify the preliminary percentages to release 85 percent of the trade demand when the field price was established. The preliminary percentages for Natural (sun-dried) Seedless raisins were adjusted soon thereafter to 62 percent free and 38 percent reserve.

Also at that meeting, the Committee computed and announced preliminary crop estimates and preliminary free and reserve percentages for Dipped Seedless, Oleate and Related Seedless, Golden Seedless, Zante Currant, Sultana, Muscat, Monukka, and Other Seedless raisins. On January 12, 1995, the Committee determined that volume control percentages only were warranted for Zante Currant, Other Seedless, and Natural (sun-dried) Seedless raisins, and it recommended final percentages of 40 percent free and 60 percent reserve for both Zante Currant and Other Seedless raisins. It determined that the supplies of the other varietal types would be less than or close enough to the computed trade demands for each of these varietals. In view of these factors, volume control percentages would not be necessary to maintain market stability for the other varietal types.

Pursuant to section 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type. Interim percentages for Natural (sun-dried) Seedless raisins of 75 percent free and 25 percent reserve were computed and announced on January 15, 1995. That action released most, but not all, of the computed trade demand for Natural (sun-dried) Seedless raisins.

Under section 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type.

The Committee's final estimate of 1994-95 production of Natural (sun-dried) Seedless raisins is 379,972 tons. Dividing the computed trade demand of 294,422 tons by the final estimate of production results in a final free percentage of 77 percent and a final reserve percentage of 23 percent.

The free and reserve percentages established by the interim final rule, and continued in effect, without change, by this rule, apply uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. Although raisin markets are limited, they are available to all handlers, regardless of size. The stabilizing effects of the percentages impact both small and large handlers positively by helping them maintain and expand markets.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** on May 17, 1995 (60 FR 26344) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

#### PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule adding section 989.248, which was published at 60 FR 26344 on May 17, 1995, is adopted as a final rule without change.

Dated: July 13, 1995.

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**NUCLEAR REGULATORY COMMISSION****10 CFR Part 50**

RIN 3150-AF06

**Technical Specifications**

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to technical specifications for nuclear power reactors. The rule codifies criteria for determining the content of technical specifications. 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.

EFFECTIVE DATE: August 18, 1995.

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**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, at a minimum, must 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 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. Since 1969, 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. 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 period, an NRC task group known as the Technical Specifications Improvement Project (TSIP) and a Subcommittee of the Atomic Industrial Forum's (AIF's) 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. Both groups made specific recommendations; these 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.

<sup>1</sup> SECY-86-10, "Recommendations for Improving Technical Specifications," 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.

The new STS should place 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 improve 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" (interim policy statement) 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 unchanged 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 (above). 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 these NUREGs, as revised, 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, PO 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).

On July 22, 1993 (58 FR 39132), the Commission published a "Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors" (final policy statement), which incorporated experience and lessons learned since publication of the interim policy statement. The Commission has decided not to withdraw the final policy statement because it contains detailed discussions of the four criteria and guidance on how the NRC staff and licensees should apply the criteria.

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 risk assessment (PRA) 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 as follows:

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

As stated in the final policy statement, if a requirement meets any one of the four criteria, it should be retained or included in technical specifications.

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.

This final rule codifies the four criteria contained in the final policy statement for defining the scope of LCOs in technical specifications. These criteria are intended to be consistent with the scope of technical specifications as stated in the Statement of Consideration for the final rule issuing § 50.36 (33 FR 18610, December 17, 1968). The Statement of Consideration discussed the scope of technical specifications as including the following:

In the revised system, emphasis is placed on two general classes of technical matters: (1) Those related to prevention of accidents, and (2) those related to mitigation of the consequences of accidents. By systematic analysis and evaluation of a particular facility, each applicant is required to identify at the construction permit stage those items that are directly related to maintaining the integrity of the physical barriers designed to contain radioactivity. Such items are expected to be the subjects of Technical Specifications in the operating license.

The first of these two general classes of technical matters to be included in technical specifications is captured by Criteria 1, 4, and, to some extent, Criterion 2, in that they address systems and process variables that alert the operator to a situation when accident initiation is more likely. The second general class of technical matters is explicitly addressed and captured by Criteria 2, 3, and 4. By applying the four criteria contained in this rule, a licensee should capture the conditions for operation of its facility that are required

to meet the principal operative standard in Section 182a. of the Atomic Energy Act, that is, that adequate protection is provided to the health and safety of the public.

The Commission recognizes that the four criteria carry a theme of focusing on the technical requirements for features of controlling importance to safety. Since many of the requirements are of significance to the health and safety of the public, this rule reflects the subjective statement of the purpose of technical specifications expressed by the Atomic Safety and Licensing Appeal Board in Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979). There, the Appeal Board interpreted technical specifications as being reserved for those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety.

The Commission wishes to emphasize that this rule is intended to be consistent with the language of section 182a. of the Atomic Energy Act, the current § 50.36 rule, and previous interpretations of the regulations. This rule merely clarifies the scope and purpose of technical specifications by identifying criteria which can be used to establish, more clearly, the framework for LCOs in technical specifications.

The Commission believes that amending § 50.36 to include the four criteria contained in the final policy statement will codify a viable, potentially safety-enhancing and cost-saving method for technical specification improvement. The Commission continues to encourage 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. Such requests would constitute complete conversions to the improved STS.

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 be developed as

line-item improvements by the NRC staff when they are clearly generic in nature, when there is evidence that a significant number of licensees could benefit from the improvement, and when the industry expresses interest in the improvement. The Commission encourages all licensees who submit technical specification related submittals based on these criteria to emphasize human factors principles to the extent practical consistent with the format and content of their current technical specifications.

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.

The Commission expects that licensees, in preparing their technical specification submittals, will utilize any plant-specific PRA or risk survey and any available literature on risk insights and PRAs. This material should be employed to strengthen the technical bases for those provisions that remain in technical specifications, when applicable, and to indicate whether the provisions to be relocated contain constraints of importance in limiting the likelihood or severity of the accident sequences that are commonly found to dominate risk. Similarly, the NRC staff has and will continue to employ risk insights in evaluating technical specifications submittals.

In addition to the use of PRA in Criterion 4 to determine the scope of technical specifications, PRA has been used as a basis for a number of improvements to the content of technical specifications over the last several years. The NRC staff has approved several relaxations in technical specification allowed outage times and surveillance test intervals which were based on PRA. In addition, the NRC staff used PRA to develop screening criteria to evaluate all of the changes in allowed outage times and surveillance test intervals that were made during the development of the improved STS. The industry and the NRC staff have used PRA to an even greater extent in the development and review of the technical specifications for advanced reactor designs.

The industry and the NRC staff are currently exploring several new approaches to utilizing PRA for technical specification improvements

including the use of on-line risk assessment tools. In addition, the industry and the NRC staff are using PRA to explore further improvements in technical specifications by examining the risks during shutdown and during the transition between modes of operation. As a part of this ongoing program of improving technical specifications, the Commission will continue to consider methods to make better use of risk and reliability information for defining future generic technical specification requirements.

During technical specification conversions, the staff will apply the backfit rule (§ 50.109) when adding new requirements from the improved STS to individual plant technical specifications, provided the licensee does not voluntarily accept the new requirements. If, however, the staff suggested additional changes are needed to make the licensee requested changes acceptable from the standpoint of adequate protection or compliance with NRC regulations, § 50.109(a)(2) and § 50.109(a)(3) do not apply and the request may be denied without the additional items.

#### Summary of Public Comments

The Commission received three letters commenting on the proposed rule. Each letter contained several comments.

One commenter representing the commercial nuclear industry expressed concern that there is insufficient regulatory guidance on how the NRC staff intends to implement this rule with respect to the fourth criterion (§ 50.36(c)(2)(ii)(D)). The commenter believes that this rule should not be modified until the NRC and the industry have reached a common understanding of the application, threshold, and intent of Criterion 4. The commenter stated, "It is our view, and the Commission apparently recognizes, that this criterion goes beyond the adequate protection standard for public health and safety and license compliance purposes embodied in the first three criteria."

Similar to this comment on the proposed rule, the Advisory Committee on Reactor Safeguards (ACRS) commented in a June 18, 1993, letter to the Chairman that the NRC staff needs to provide more detailed guidance on the definition of "significant to public health and safety," as it is used in Criterion 4.

Criterion 4 is intended to capture those constraints that probabilistic risk assessment or operating experience show to be significant to public health and safety, consistent with the Commission's PRA Policies. The level of significance either would need to be

such that it justified including the constraints in the technical specifications to ensure adequate protection of the public health and safety or that the addition of such constraints provides substantial additional protection to the public health and safety.

The Commission identified four systems that meet Criterion 4 in the final policy statement based on previous qualitative reviews of operating experience and risk. They are reactor core isolation cooling/isolation condenser, residual heat removal, standby liquid control, and recirculation pump trip. The Commission recognizes, however, that other structures, systems, or components may meet this criterion. Plant- and design-specific PRAs have yielded valuable insight to unique plant vulnerabilities not fully recognized in the safety, design basis accident, or transient analyses.

The NRC's current regulatory requirements are largely based on deterministic engineering criteria involving the use of multiple barriers and defense in depth. Recently, the NRC staff has formulated a comprehensive plan for the application of PRA technology and insights throughout the agency. It is expected that the PRA Implementation Plan will serve as the framework for continued and future applications of PRA at the NRC. Implementation of this plan will increase the systematic use of risk assessment techniques. To ensure consistent and appropriate decision-making that incorporates PRA methods and results, it is important that coherent and clear application guidelines are applied. As part of the PRA Implementation Plan, such guidelines will be established (incorporating safety goals and backfit rule considerations) that address the interdependence of probabilistic risk and deterministic engineering principles. The process of developing these guidelines will involve communications among the NRC staff, the nuclear industry, and the public to ensure that all parties understand the role of PRA methods and results in NRC's risk management efforts. The NRC staff anticipates that, as it gains experience with the development and use of such PRA application guidelines, it will be better able to refine such phrases as "significant to public health and safety," and other phrases that are used in many of the Commission's regulations.

The Commission could delay publication of this final rule until the PRA application guidelines are in place. However, the Commission believes that the experience gained while using the

criteria under the interim and final policy statements combined with the limitations imposed on the NRC staff by the backfit rule provide assurance that, in the interim, the staff's use of Criterion 4 to apply PRA to technical specification content will be properly controlled. The Commission has concluded that it is appropriate to publish this final rule, which provides the framework for technical specifications, at this time.

One commenter stated that the PRA portion of the fourth criterion should be clarified to include only those equipment items important to risk-significant sequences as defined in Generic Letter 88-20, "Individual Plant Examination for Severe Accident Vulnerabilities," Appendix 2, and reported in licensees' individual plant examination (IPE) reports.

The IPE program has resulted in commercial reactor licensees using risk-assessment methods to identify plant-specific severe accident vulnerabilities. Since submittal of their IPE reports, many licensees have enhanced their plant-specific PRAs and have gained additional insights into unique plant vulnerabilities. These additional insights from PRAs are being used by licensees in such areas as implementation of the maintenance rule.

As stated in the Commission's "Proposed Policy Statement on the Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities," the use of PRA technology should be increased in all regulatory matters to the extent supported by the state of the art in PRA methods and data and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy. The Commission will continue to apply PRA to technical specifications in accordance with its proposed policy statement on the use of PRA. In addition, guidance for specific applications or classes of applications will be developed under the PRA Implementation Plan. The Commission believes this is a more appropriate means to define how Criterion 4 will be used in practice, rather than to limit the structures, systems, and components captured by Criterion 4 to those items important to risk-significant sequences as defined in Generic Letter 88-20, Appendix 2, and reported in licensees' IPE reports. The Commission believes that this process will provide the NRC staff and the industry with additional risk insights, beyond those identified through the IPE program.

The same commenter said that the operating experience portion of the

fourth criterion should be deleted because it is subjective and because no equipment would satisfy only that portion of the fourth criterion and none of the other criteria.

While operating experience is an important part of PRA, not all PRA models are sophisticated enough to capture all operating experience. The Commission believes that operating experience can play an important role in determining the safety significance of structures, systems, and components and that there will be no adverse impact by including operating experience as part of Criterion 4.

One commenter emphasized that the development of implementation guidance, especially with respect to Criterion 4, should be consistent with the implementation guidance of the maintenance rule.

As stated previously, the Commission believes that the improved STS, the final policy statement, the backfit rule (§ 50.109), and the statement of consideration for this rule contain sufficient guidance on implementation of the criteria to proceed with rulemaking. Supplementary guidance will continue to be provided to the NRC staff that will support the process for implementing the four criteria on both a generic and plant-specific basis, and will be publicly available. The NRC staff will ensure that any guidance documents that relate to the implementation of the four criteria will be consistent with the implementation guidance of the maintenance rule along with the guidance for other rules promulgated by the Commission.

One commenter expressed a concern with respect to the level of PRA information necessary to support the relocation of existing technical specifications which do not meet the first three criteria.

If a technical specification provision does not meet any of the first three criteria, and if the current PRA knowledge or operating experience does not identify the structure, system, or component as risk significant, the NRC staff will not preclude relocating such technical specifications. The level of PRA information necessary to support relocation would be considered as part of the overall review of the supporting basis for the proposed change. The Commission expects that licensees will utilize PRA insights to indicate whether the provisions to be relocated contain constraints of importance in limiting the likelihood or severity of the accident sequences that are commonly found to dominate risk.

One commenter stated that the implementing guidance needs to be

clear on how the proposed criteria would be used to determine if new requirements are to be incorporated into technical specifications.

The Commission believes that the improved STS, the final policy statement, the backfit rule (§ 50.109), and the statement of consideration for this rule contain sufficient guidance on implementation of the criteria. The staff will also ensure that application of the criteria to new requirements is consistent with the guidance in the draft "Regulatory Analysis Guidelines," Revision 2, published in August 1993 (NUREG/BR-0058), and the final version of Revision 2 when it is approved by the Commission. In addition, the NRC has recently published NUREG/CR-6141, "Handbook of Methods for Risk-Based Analyses of Technical Specifications," December 1994, which summarizes systematic risk-based methods to improve various aspects of technical specification requirements. The handbook was developed through research sponsored by the NRC and will be used as a reference document to assist the NRC staff in reviewing licensees' risk-based analyses submitted as part of the bases for proposed changes in facility technical specifications. This guidance will be updated periodically to incorporate lessons learned and changes in the state of the art, will help ensure the criteria are applied in a consistent and controlled manner, and will be publicly available. As stated above, as part of the PRA Implementation Plan, PRA application guidelines will be established (incorporating safety goals and backfit rule considerations) that address the interdependence of probabilistic risk and deterministic engineering principles. As these application guidelines develop, they will progressively be used to provide guidance to the NRC staff on the use of the criteria contained in this rule and the application of the backfit rule to new regulatory requirements.

One commenter stated that the same or similar criteria to those in the rule should also be applied to 10 CFR 50.36(c)(3), (4), and (5), so that surveillance requirements, design features, and administrative controls which do not provide the necessary "adequate protection of the health and safety of the public" can be relocated to other licensee-controlled documents.

With respect to § 50.36 (c)(3), "Surveillance Requirements," the Commission stated in the final policy statement that appropriate surveillance requirements and actions should be retained for each LCO which remains or

is included in the technical specifications.

The criteria in § 50.36(c)(2) apply to safety functions. Therefore, the Commission does not believe that these criteria can be appropriately applied to the types of requirements found in the "design features" and "administrative controls" sections of the technical specifications. The NRC staff has, however, been pursuing separate improvements to these requirements, in cooperation with industry, using the intent of the criteria to identify the optimum set of requirements in each of these areas and to eliminate redundancy to other regulations consistent with the minimum requirements of § 50.36 and the Atomic Energy Act, as amended.

One commenter stated that the removal of items from plant technical specifications may decrease enforceability and licensee attention to safety.

The Commission does not agree that the removal of items from plant technical specifications will decrease licensee attention to safety. On the contrary, the Commission believes that implementation of the criteria contained in this rule will produce an improvement in the safety of nuclear power plants through the use of more operator-oriented technical specifications, improved technical specification bases, reduced action statement induced plant transients, and more efficient use of NRC and industry resources. Clarification of the scope and purpose of technical specifications has provided useful guidance to both the NRC and industry and has resulted in improved technical specifications that are intended to focus licensee and plant operator attention on those plant conditions most important to safety.

The Commission also does not agree that the removal of items from plant technical specifications will have any adverse impact on the NRC's ability to take enforcement action on safety-significant issues. The improved STS are intended specifically to focus on the operating plant parameters and associated surveillance criteria of safety significance. The Commission requires compliance with technical specifications, and expects adherence to commitments contained in licensee-controlled documents. Violations and deviations will, as in the past, be handled in accordance with the NRC enforcement policy in 10 CFR Part 2, Appendix C. Any changes to a licensee's technical specifications to apply these criteria will be made by the license amendment process prior to implementation.

When a licensee elects to apply these criteria, some requirements are relocated from technical specifications to the FSAR or to other licensee-controlled documents. Licensees are to operate their facilities in conformance with the descriptions of their facilities and procedures in their FSAR. Changes to the facility or to procedures described in the FSAR are to be made in accordance with 10 CFR 50.59. The Commission will take appropriate enforcement action to ensure that licensees comply with 10 CFR 50.59. Changes made in accordance with the provisions of other licensee-controlled documents (e.g., QA plan, security plan) are subject to the specific requirements for those documents. Nothing in this rule limits the authority of the NRC to conduct necessary inspections and to take appropriate enforcement action when regulatory requirements or commitments are not met.

The same commenter stated that the removal of items from plant technical specifications will diminish public participation rights in the regulation of operating nuclear power plants by diminishing the universe of potential operating license amendment cases.

Any changes to a licensee's technical specifications to apply these criteria will be made by the license amendment process before implementation. The review of each license amendment will involve an opportunity for public participation. One of the goals of the technical specifications improvement program was to make more efficient use of NRC and industry resources by focusing attention on those plant conditions most important to safety and, in turn, reducing the number of license amendment requests. Since 1969, there has been a trend toward including in technical specifications not only those requirements derived from the analyses and evaluations 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 is 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 has contributed to the volume of technical specifications and to the several-fold increase, since 1969, in the number of license amendment applications to effect changes to the technical specifications. 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.

The commenter found it curious that an industry and an agency that claim to be able to quantify the risks of nuclear power are unable to quantify this impact on safety, and stated, "Perhaps if it is unquantifiable, the alleged adverse impact does not really exist."

The Commission agrees that there are limitations and uncertainties in the ability to quantify the impact on safety described above. Uncertainties exist in any regulatory approach and these uncertainties are derived from knowledge limitations. A probabilistic approach has exposed some of these limitations and yielded an improved framework to better focus and assess their significance and assist in developing a strategy to accommodate them in the regulatory process. The Commission does not intend, however, to let these limitations prevent it from taking steps to improve the regulations in a manner that will have substantial safety benefits. The Commission believes the public will be better served by focusing both NRC and industry attention on the most safety-significant items.

The NRC staff has made three changes to this rule since it was published in its proposed form. The first change was made in order to maintain consistency with other NRC staff and Commission documents that have been issued since this rule was published in its proposed form. In § 50.36(c)(2)(ii)(D), the term "probabilistic safety assessment" has been changed to "probabilistic risk assessment."

The second and third changes are in § 50.36(c)(2)(iii). The beginning of the first sentence was changed to read, "A licensee is not required to *propose* to modify technical specifications \* \* \*" rather than "A licensee is not required to modify technical specifications \* \* \*" This change was made to clarify that a licensee would be required to modify their technical specifications if the Commission determined that a new requirement was necessary in accordance with the backfit rule and the new requirement met one of the four criteria contained in § 50.36(c)(2)(ii).

The third change is the deletion of the last sentence in § 50.36(c)(2)(iii). The sentence read, "However, for technical specification amendments a licensee proposes after August 18, 1995, the criteria in paragraph (c)(2)(ii) of this section provide an acceptable scope for limiting conditions for operation." This sentence was deleted because it did not add or modify any requirements and the thought is adequately expressed in this statement of consideration.

#### **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 final rule is not a major Federal action significantly affecting the quality of the human environment and will not degrade the environment in any way. Therefore, the Commission concludes that there will be no significant impact on the environment from this rule. This discussion constitutes the environmental assessment and finding of no significant impact for this rule; a separate assessment has not been prepared.

#### **Paperwork Reduction Act Statement**

This final 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 rule. The Commission believes that 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 gave the public an opportunity for comment. In addition, the determination that no regulatory analysis is necessary was noted in the **Federal Register** Notice for the proposed rule, and the NRC received no comments on this issue.

The criteria being added to § 50.36 are the same as 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 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 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 action when it made the decision 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. 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 for Nuclear Power Reactors," and in July 1993, published the final policy statement. During its 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 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 applying the criteria under the final policy statement or through a rule, except that the criteria are more readily available to future users in a rule rather 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 this final rule does not have a significant economic impact on a substantial number of small entities. This 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 final rule and, therefore, a backfit analysis is not required for this final rule 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. 552 and 553, the NRC is adopting 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 50.80-50.81 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 risk assessment has shown to be significant to public health and safety.

(iii) A licensee is not required to propose to modify technical specifications that are included in any license issued before August 18, 1995, to satisfy the criteria in paragraph (c)(2)(ii) of this section.

(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 13th day of July 1995.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission*

[FR Doc. 95-17723 Filed 7-18-95; 8:45 am]

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**DEPARTMENT OF ENERGY**

**Office of Energy Efficiency and Renewable Energy**

**10 CFR Part 451**

[Docket No. EE-RM-94-301]

**Renewable Energy Production Incentives**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Final rulemaking.

**SUMMARY:** The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EE) is today issuing a final rule to implement a renewable energy production incentive program in response to the requirements of section 1212 of the Energy Policy Act of 1992. This program provides for incentive payments to owners or operators of qualified renewable energy facilities, subject to the availability of appropriations. This rule contains procedures for application, qualification requirements, procedures for calculation of incentive payments, and administrative remedies.

**DATES: Effective Date:** This regulation is effective August 18, 1995.

**Application Date:** Applications for incentive payments for energy produced in fiscal year 1994 shall be due September 5, 1995.

**FOR FURTHER INFORMATION CONTACT:**

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