

Procedures, of this chapter. Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. The circular is maintained through periodic publication in the **Federal Register** and is available on the Internet under ftp://ftp.fedworld.gov/pub/tel/sureties.txt, and on the Department of the Treasury's computer bulletin board at 202-874-6817.

### Subpart C—Insurance for Contractors, Engineers, and Architects, Telecommunications Borrowers

#### § 1788.46 General.

This subpart sets forth RUS policies for minimum insurance requirements for contractors, engineers, and architects performing work under contracts which are wholly or partially financed by RUS loans or guarantees with telecommunications borrowers.

#### § 1788.47 Policy requirements.

(a) Contractors, engineers, and architects performing work for borrowers under construction, engineering, and architectural service contracts shall obtain insurance coverage, as required in § 1788.48, and maintain it in effect until work under the contracts is completed.

(b) Contractors entering into construction contracts with borrowers shall furnish a contractors' bond, except as provided for in § 1788.49, covering all of the contractors' undertaking under the contract.

(c) Borrowers shall make sure that their contractors, engineers, and architects comply with the insurance and bond requirements of their contracts.

#### § 1788.48 Contract insurance requirements.

Contracts entered into between borrowers and contractors, engineers, and architects shall provide that they take out and maintain throughout the contract period insurance of the following types and minimum amounts:

(a) Workers' compensation and employers' liability insurance, as required by law, covering all their employees who perform any of the obligations of the contractor, engineer, and architect under the contract. If any employer or employee is not subject to the workers' compensation laws of the governing state, then insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

(b) Public liability insurance covering all operations under the contract shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$1 million aggregate for accidents during the policy period. A single limit of \$1 million of bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(c) Automobile liability insurance on all motor vehicles used in connection with the contract, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million per occurrence, and property damage limits of \$1 million for each occurrence. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

(d) When a borrower contracts for the installation of major equipment by other than the supplier or for the moving of major equipment from one location to another, the contractor shall furnish the borrower with an installation floater policy. The policy shall cover all risks of damage to the equipment until completion of the installation contract.

#### § 1788.49 Contractors' bond requirements.

Construction contracts in amounts in excess of \$250,000 for facilities shall require contractors to secure a contractors' bond, on a form approved by RUS, attached to the contract in a penal sum of not less than the contract price, which is the sum of all labor and materials including owner-furnished materials installed in the project. RUS Form 168b is for use when the contract exceeds \$250,000. RUS Form 168c is for use when the contractor's surety has accepted a Small Business Administration guarantee and the contract is for \$1,000,000 or less. For minor construction contracts under which work will be done in sections and no section will exceed a total cost of \$250,000, the borrower may waive the requirement for a contractors' bond.

#### § 1788.50 Acceptable sureties.

Surety companies providing contractors' bonds shall be listed as acceptable sureties in the U.S. Department of Treasury Circular No. 570. The circular is maintained through periodic publication in the **Federal Register** and is available on the Internet under ftp://ftp.fedworld.gov/pub/tel/sureties.txt, and on the Department of

the Treasury's computer bulletin board at 202-874-6817.

#### §§ 1788.51—1788.53 [Reserved]

#### § 1788.54 Compliance with contracts.

It is the responsibility of the borrower to determine, before the commencement of work, that the engineer, architect, and the contractor have insurance that complies with their contract requirements.

#### § 1788.55 Providing RUS evidence.

When RUS shall specifically so direct, the borrower shall also require the engineer, the architect, and the contractor, to forward to RUS evidence of compliance with their contract representative of the insurance company and include a provision that no change in or cancellation of any policy listed in the certificate will be made without the prior written notice to the borrower and to RUS.

Dated: October 2, 1998.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

#### Preliminary Criterion on the Use of Non-Owner Operating Companies

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed criterion for non-owner operating service companies.

**SUMMARY:** In anticipation of an expected increase in the use of non-owner operating companies, the NRC is seeking public comment on a proposed evaluation criterion concerning whether the use of contract service operating companies in connection with the operation of nuclear power reactors requires approval by the NRC under the regulations governing transfer of licenses. Comments on other criteria that should be considered concerning non-owner operators are also invited. Publication of draft regulatory guidance related to the screening criteria for the transfer of licenses is scheduled for June 1999.

**DATES:** Comments should be submitted by January 15, 1999. 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:** Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays.

Examine copies of comments received at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Davis, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-1016, e-mail [mjd1@nrc.gov](mailto:mjd1@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 21, 1996, the NRC issued Administrative Letter (AL) 96-02, "Licensee Responsibilities Related to Financial Qualifications," reminding power reactor licensees of their ongoing obligation to seek and obtain prior written consent from the NRC for any changes that would constitute a transfer of an NRC license, directly or indirectly, through transfer of control of the license pursuant to 10 CFR 50.80 and Section 184 of the Atomic Energy Act as amended. AL 96-02 primarily addressed restructuring activities, such as mergers, the formation of holding companies, and sales of facilities or portions of facilities.

The use of service companies to provide operational support in the operation of nuclear power facilities may also require NRC review and approval and a conforming license amendment, depending on the extent to which the ability to control operations is being transferred and the degree of autonomy being granted to the operating company.

There has been limited experience with the introduction of non-owner operating companies. In most instances to date, an existing operating organization was split off from the owner and transferred to a newly formed operating company affiliated with the owner and its parent company. Examples include the transfer approval and license amendments for Farley Units 1 and 2, Hatch Units 1 and 2, and Vogtle Units 1 and 2 when Southern Nuclear Operating Company became the licensed operator of the facilities in place of Alabama Power Company and Georgia Power Company. All three companies are subsidiaries of the Southern Company. Another similar example is the transfer approval and license amendment for River Bend Unit

1 when Entergy Operations, Inc., a subsidiary of Entergy Corporation, became the licensed operator at the same time Entergy Corporation acquired Gulf States Utilities, the former operator. In each of these cases, there was no wholesale change of operating personnel, only a transfer of the existing operating organization to a new operating company. In each of these cases, the licensees recognized that review and approval under 10 CFR 50.80 was necessary.

In another example, in early 1997, Maine Yankee Atomic Power Company (MYAPC) entered into a management services agreement with Entergy Nuclear, Inc., to provide operations management personnel, including the positions of Maine Yankee President and Vice President, Licensing. The Entergy personnel provided were to become employees of MYAPC while at the same time remaining employees of Entergy Nuclear, Inc., and would serve at the pleasure of and take direction from the MYAPC Board of Directors. MYAPC stated in a letter dated February 6, 1997, to the NRC that it had concluded that neither the management services agreement with Entergy nor the specific management changes would require prior NRC approval or a Technical Specification (TS) change. The NRC staff concurred with this assessment, since MYAPC retained ultimate safety-related decisionmaking authority and Entergy personnel were concurrently to become employees of MYAPC.

A similar management services agreement was initiated in early 1998 in which Illinois Power contracted with PECO Energy to provide certain management, technical, and support services to Clinton Power Station (CPS). The senior managers provided by PECO Energy were integrated into the Illinois Power organization and are subject to the direction of Illinois Power. The most senior PECO Energy manager, serving as Chief Nuclear Officer for CPS, also became a dual employee and a corporate officer of Illinois Power. Illinois Power stated in a letter dated January 23, 1998, that it had "concluded that neither the Management Services Agreement with PECO Energy nor the resulting specific management changes require NRC approval. Illinois Power remains the operating licensee for CPS, with ultimate authority to control, and responsibility for, safe plant operation and regulatory compliance." The NRC concurred with that assessment.

**Discussion**

As nuclear utilities evolve within a deregulated environment, the NRC staff

recognizes that various alternative and potentially complex non-owner operator arrangements may be pursued by licensees. With regard to such new arrangements, the NRC staff recognizes that the decision on whether 10 CFR 50.80 consent is necessary, as discussed in SECY-97-144, depends on the extent to which the ability to control operations (within the broadest sense of the Commission's regulations and the terms of the operating license) is being transferred and the degree of autonomy granted to the operating company. The NRC staff also recognizes that a more detailed criterion for the submission of new arrangements pursuant to 10 CFR 50.80 for NRC review and consent could be helpful in identifying for licensees the NRC staff's information needs for such reviews, thereby contributing to more timely reviews.

The NRC staff has developed a proposed criterion regarding changes to nuclear plant operating entities by which the need for NRC review and consent under 10 CFR 50.80 can be judged. The NRC staff has focused this criterion on the concept of final decisionmaking authority: If an operating service company provides advice but does not make the final decision in a particular area that cannot be overruled or is not subject to reversal by the existing licensee, then there has been no transfer of operating authority for that area. The areas to be considered include the following:

- Decision to shut down for repairs.
- Decision to start up the plant.
- Approval of licensee event reports.
- Decision on whether to make a 10 CFR 50.72 report.
- Authority to make operability determinations.
- Authority to change staffing levels.
- Authority to control the terms of employment for licensed staff.
- Authority to make organizational changes.
- Decision to defer repairs.
- Authority for quality assurance responsibilities (selecting audits, approving audit reports, accepting audit responses).
- Budget-setting and spending authority.
- Decision to continue operation with equipment problems.
- Authority over the design control of the facility.
- Decision to continue operations or permanently cease operation.

If a threshold review indicates that the new entity is being granted such final decisionmaking authority in these areas, then the NRC staff would expect the licensee to request full NRC review and consent under 10 CFR 50.80. If the

NRC staff concludes that the new entity is qualified to become a licensee, an order approving the proposed transfer would be issued. Before implementation of the transfer, a conforming license amendment request would need to be submitted and, following consent under 10 CFR 50.80, the license would be amended upon implementation of the transfer to reflect the new transferee.

In addition to this preliminary criterion, the NRC staff notes that lines of authority and responsibility in the organizational chain of command are specified in plant Technical Specifications (TS) in the administrative controls section (Section 5.0 of the Standard TS) or in Updated Final Safety Analysis Reports (UFSAR). When considering the use of service company management talent, the NRC staff expects licensees to consider the licensing basis to identify what management structure, authorities, and responsibilities were previously approved. If the lines of authority or responsibilities specified in the TS are being materially changed, the change would need review and approval by NRC as a license amendment under 10 CFR 50.90 before implementation. The NRC staff expects that licensees will ensure that service company personnel meet UFSAR or TS-specified educational and experience requirements for the positions they will be taking and will seek approval for any license changes they deem necessary.

Licensees and members of the public are invited to submit comments on the proposed criterion regarding changes to nuclear plant operating entities by which the need for 10 CFR 50.80 consent can be determined. Comments on other criteria that should be considered concerning non-owner operators are also invited.

Dated at Rockville, Maryland, this 5th day of October, 1998.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 98-27200 Filed 10-8-98; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-NM-58-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Boeing Model 737-100, -200, -300, -400, and -500 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-100, -200, -300, -400, and -500 series airplanes. This proposal would require repetitive inspections to detect cracking of various areas of the forward pressure bulkhead, and repair, if necessary. This proposal would also require certain preventive modifications, which, when accomplished, would terminate the repetitive inspections for most, but not all, of the affected areas. This proposal is prompted by reports indicating that numerous fatigue cracks were found on critical areas of the forward pressure bulkhead. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which could result in rapid decompression of the airplane fuselage.

**DATES:** Comments must be received by November 23, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-58-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Nenita K. Odesa, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind

Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2557; fax (425) 227-1181.

#### **SUPPLEMENTARY INFORMATION:**

#### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-58-AD." The postcard will be date stamped and returned to the commenter.

#### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-58-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### **Discussion**

The FAA has received reports indicating that operators have found numerous fatigue cracks on the body station 178 forward pressure bulkhead on certain Boeing Model 737 series airplanes. The longest fatigue crack was approximately 25 inches in length. The fatigue cracks were found at three critical structural areas of the bulkhead, namely, at the side chord areas of the bulkhead, at certain vertical chords of the bulkhead, and on the bulkhead web itself between left and right buttock lines 17.0. Such fatigue cracking, if not corrected, could result in rapid decompression of the airplane fuselage.