

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Clarified Requirements When Licensees Depart From a License Condition or Technical Specification in an Emergency; Proposed Generic Communication

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to clarify the requirements of Title 10 of the Code of Federal Regulations (10 CFR) 50.54(y) when licensees implement 10 CFR 50.54(x) to depart from a license condition or technical specification in an emergency.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML082120745.

DATES: Comment period expires October 14, 2008. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6-D59, Washington, DC 20555-0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T-6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Jeff Laughlin at 301-415-1113 or by e-mail at Jeff.Laughlin@nrc.gov.

SUPPLEMENTARY INFORMATION:

NRC Regulatory Issue Summary 2008-XX; Clarified Requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.54(y) When Implementing 10 CFR Section 50.54(x) To Depart From a License Condition or Technical Specification

Addressees

All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Intent

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.54(y) when licensees implement 10 CFR Section 50.54(x) to depart from a license condition or technical specification in an emergency. This RIS requires no action or written response on the part of the addressees.

Background

Section 50.54(y) states, "Licensee actions permitted by paragraph (x) of this section shall be approved, as a minimum, by a licensed senior operator * * *" This describes the lowest ranking individual authorized to approve the departure from a license condition or technical specification. An individual other than a licensed senior operator could make such a decision, as long as the person is in a position of authority greater than the licensed senior operator. The Statements of Consideration (SOC) that accompanied the final rule for "10 CFR Part 50, Applicability of License; Conditions and Technical Specifications in an Emergency," in 48 FR 13966, April 1, 1983, stated that the decision to depart from the license could be made by any licensed senior operator for the unit involved. However, in an emergency, that decision would pass to more senior licensee personnel, if available, as higher authorities in the chain of command. That position was reiterated by Mr. John A. Zwolinski, Director, BWR Project Directorate #1, to Consumers Power Company in a November 5, 1986 letter with the subject, "Consumers Power Company (CPC) Request for Interpretation of 10 CFR 50.54(y)." In 2004, the staff

approved Nuclear Energy Institute (NEI) 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan," which licensees used as a template for making security plan changes. Some industry personnel questioned whether this document was contrary to the staff's earlier position, in that the template required the highest ranking licensee official (e.g., Emergency Director (ED)) to receive approval from a licensed senior operator to depart from the license.

Discussion

Section 50.54(y) of 10 CFR does not require that the decision to depart from the license or technical specifications be made only by a licensed senior operator or that the individual making the decision possess a senior operator's license. Rather, such a decision could be made *either* by any licensed senior operator *or* any individual in a superior position to a licensed senior operator. As stated in the SOC, if "more senior licensee personnel" are available, "the decision to depart from the license in an emergency would pass to them (as higher authorities in the chain of command)." There is nothing in the rule to indicate that the "more senior licensee personnel" are also required to be licensed senior operators. In addition, there is nothing in the rule that would require the "more senior licensee personnel" to obtain the concurrence of a licensed senior operator to make such a decision, and the SOC does not contain any discussion suggesting such Commission intent.

With respect to the language in the NEI template, which states that the departure decision would be made by the ED, with approval, at a minimum, from a licensed senior reactor operator, the NRC notes that the NEI template is not an NRC interpretation of its regulations. This template, once approved, described one way to comply with NRC requirements. A licensee is free to utilize other approaches which comply with the requirements of the regulation as interpreted and applied by the NRC. Also, the fact that the NRC has approved a document that seems to employ more stringent measures (e.g., both the ED and senior reactor operator must concur on the departure) does not mean that less stringent measures would

be insufficient in order to comply with the regulations. Each individual licensee is free to determine whether or not it wants to employ such a concurrence process.

Summary of Issue

The decision to depart from the license or a technical specification in an emergency shall be approved, as a minimum, by a licensed senior operator. If more senior licensee personnel are available, the decision to depart from the license in an emergency would pass to them as higher authorities in the chain of command. The rule does not specify that the senior licensee personnel be licensed senior operators or that they obtain the concurrence of a licensed senior operator to make such a decision.

Backfit Discussion

This RIS does not represent a new or different staff position regarding the implementation of 10 CFR 50.54(x) and is consistent with the SOC for 10 CFR 50.54(x) and (y), and the staff guidance in the November, 1986 Zwolinski letter. It requires no action or written response. Any action by addressees to implement changes to their security or emergency plans, or procedures in accordance with the guidance in this RIS is strictly voluntary and, therefore, is not a backfit under 10 CFR 50.109, "Backfitting." Consequently, the NRC staff did not perform a backfit analysis.

Federal Register Notification

To be done after the public comments period.

Congressional Review Act

This RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. 801-886) and, therefore, is not subject to the Act.

Paperwork Reduction Act Statement

This RIS does not contain any information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Contact

Please direct any questions about this matter to Jeff Laughlin at 301-415-1113 or by e-mail at Jeff.Laughlin@nrc.gov.

End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 7th day of August 2008.

For the Nuclear Regulatory Commission.

Martin C. Murphy,

Chief, Generic Communications Branch,
Division of Policy and Rulemaking, Office
of Nuclear Reactor Regulation.

[FR Doc. E8-18918 Filed 8-14-08; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 219

[Regulation S; Docket No. R-1325]

Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing amendments to Subpart A of Regulation S, which implements the requirement under the Right to Financial Privacy Act (RFPA) that the Board establish the rates and conditions under which payment shall be made by a government authority to a financial institution for assembling or providing financial records pursuant to RFPA. These proposed amendments update the fees to be charged and take account of recent advances in electronic document productions.

DATES: Comments must be submitted on or before September 29, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R-1325, by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the

instructions for submitting comments at: <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* regs.comments@federalreserve.gov.

Include the docket number in the subject line of the message.

- *Fax:* (202) 452-3101.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

Jason Gonzalez, Senior Attorney (202/452-3275), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551. For users of the Telecommunication Device for the Deaf (TDD), please call (202) 263-4869.

SUPPLEMENTARY INFORMATION:

Background

Section 1115 of the RFPA (12 U.S.C. 3415) requires the Board to establish, by regulation, the rates and conditions under which payment is made by a Government authority to a financial institution for searching for, reproducing, or transporting data required or requested under the RFPA. Shortly after the RFPA was adopted, the Board issued Regulation S (12 CFR Part 219) to implement this provision (44 FR 55812, September 28, 1979). These provisions were subsequently designated Subpart A of Regulation S. In June 1996, the Board revised Regulation S by updating the fees financial institutions could charge and streamlining the Subpart generally. 61 FR 29638 (June 12, 1996).

In the twelve years since the last revision, the Board has observed two significant changes that now require further amendments to Subpart A of Regulation S. First, increases in salary and benefits have caused the fees chargeable for reproducing financial records to become outdated. Furthermore, in recent years, the