

# 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

[NRC-2012-0179]

### NRC Position on the Relationship Between General Design Criteria and Technical Specification Operability

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory issue summary; public meeting and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is holding a public meeting to discuss a draft regulatory issue summary (RIS) that clarifies the NRC staff's position on the relationship between the general design criteria (GDC) for nuclear power plants and technical specification operability. In addition, the draft RIS clarifies the process for addressing nonconformances with GDC as incorporated into a plant's current licensing basis. The NRC is also seeking public comment on the draft RIS.

**DATES:** Submit comments by September 14, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on <http://www.regulations.gov> under Docket ID NRC-2012-0179. You may submit comments by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0179. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory

Commission, Washington, DC 20555-0001.

- *Fax comments to:* RADB at 301-492-3446.

For additional direction on accessing information and submitting comments, see "Accessing Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Thomas Alexion, Senior Project Manager, Generic Communications Branch, Division of Policy and Rulemaking, Office Nuclear Reactor Regulation, Mail Stop: OWFN-12-D-20, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1326, email: [Thomas.Alexion@nrc.gov](mailto:Thomas.Alexion@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Accessing Information and Submitting Comments

###### A. Accessing Information

Please refer to Docket ID NRC-2012-0179 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0179.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The draft RIS "NRC Staff Position on the Relationship Between GDC Requirements and Technical Specification Operability," is available electronically under ADAMS Accession No. ML12137A346.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

##### B. Submitting Comments

Please include Docket ID NRC-2012-0179 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

##### II. Discussion

###### Addressees

All holders of, and applicants for, power reactor operating licenses issued under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," except those that 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 relationship between Appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR part 50, and 10 CFR 50.36, "Technical Specifications." In addition, the RIS is clarifying the process for addressing nonconformances with general design criteria (GDC) as incorporated into a plant's current licensing basis (CLB). This RIS does not transmit any new requirements and does not require any

specific action or written response on the part of an addressee.

#### *Background Information*

Recently, the NRC has received questions about the relationship between licensing basis design requirements, such as the GDC as incorporated into the plant CLB, and technical specification (TS) operability requirements. The relationship between CLB design requirements and the TS was addressed in a memorandum from Thomas E. Murley, Director, Office of Nuclear Reactor Regulation (NRR) to the NRR staff, dated January 24, 1994 (ADAMS Accession No. ML12115A279). The positions described in this memo were incorporated into the Inspection Manual Part 9900 Technical Guidance, "Operability Determinations & Functionality Assessments for Resolution of Degraded or Nonconforming Conditions Adverse to Quality or Safety (Operability Determination Process)," which was issued as the attachment to RIS 2005-20, Revision 1, "Revision to NRC Inspection Manual Part 9900 Technical Guidance, 'Operability Determinations & Functionality Assessments for Resolution of Degraded or Nonconforming Conditions Adverse to Quality or Safety'" (ADAMS Accession No. ML073531473).

The GDCs or a plant-specific equivalent,<sup>1</sup> as incorporated into the CLB, have an important relationship to the operability requirements of the TS. Comprehending this relationship is critical to understanding how licensees should address nonconformances with CLB design requirements. This RIS discusses these relationships to promote a more comprehensive understanding of how the NRC requirements work in concert with TS to ensure plant safety.

#### *Relationship of the GDC to the Technical Specifications*

The GDC and the TS differ in that the GDC specify NRC's requirements for the *design* of nuclear power reactors, whereas the TS are included in the license and specify requirements for the *operation* of nuclear power reactors. Design requirements, such as GDCs or similar requirements, are typically included in the licensing basis for every nuclear power plant. GDCs, according to Appendix A to 10 CFR Part 50, "establish the necessary design,

fabrication, construction, testing, and performance requirements for structures, systems, and components (SSCs) important to safety." As such, the GDCs cover a broad category of SSCs that are important to safety, including those SSCs that are covered by TS. Both the design capability of the facility to meet the GDC (or a plant-specific equivalent) and the operational restrictions, which are to be included in the TS, are described in the final safety analysis report (FSAR). The staff safety evaluation documents the acceptability of these analyses, and it is the combination of the FSAR analyses and the staff safety evaluation that forms the bases from which the TS are derived. It is important to note that the GDCs cover a broader scope of SSCs than the TS because the TS establish, among other things, the limiting conditions for operations (LCOs). LCOs are the "lowest functional capability or performance levels of equipment required for safe operation of the facility." Section 182 of the Atomic Energy Act of 1954, as amended and as implemented by 10 CFR 50.36, requires that those design features of the facility that, if altered or modified, would have a significant effect on safety, be included in the TS. Thus, TS are intended to ensure that the most safety-significant design features of a plant, as determined by the safety analysis, maintain their capability to perform their safety functions.

#### *Technical Specification Operability Determinations and the GDC*

Recently, the NRC staff learned that some licensees follow their corrective action program for an identified nonconformance with a CLB design requirement, such as a GDC, or a plant-specific equivalent, that is part of the plant's CLB without consideration of the need to apply the Part 9900 operability determination process. To the NRC staff it appears that not every licensee understands the relationship between CLB design requirements and TS requirements for nonconforming conditions or that the Part 9900 operability determination process also applies to nonconforming conditions.

As noted in the January 24, 1994, memo, not all GDCs that are included in the CLB are explicitly identified in TS. However, those that are not explicitly identified may still need to be considered when either determining or to establish the basis for operability of TS SSCs. It is the staff's position that any nonconformance with a GDC, or a plant-specific equivalent included in the CLB should be evaluated to determine if the nonconformance affects

or alters the operability status of a TS SSC.

As set forth in Part 9900, a documented determination is needed to establish the basis for concluding that an SSC remains capable of performing its safety function in the presence of the nonconforming condition. Part 9900 states that a "degraded condition is one in which the qualification of an SSC or its functional capability is reduced." Similarly, Part 9900 defines a nonconforming condition as "a condition of an SSC that involves a failure to meet the CLB or a situation in which quality has been reduced because of factors such as improper design, testing, construction, or modification." Examples of nonconforming conditions include: (1) An SSC that fails to conform to one or more applicable codes or standards (e.g., the CFR, operating license, TS, updated final safety analysis report, or licensee commitments), (2) an as-built or as-modified SSC that does not meet the current licensing basis, (3) operating experience or engineering reviews that identify a design inadequacy, or (4) documentation required by NRC requirements such as 10 CFR 50.54, "Conditions of licenses," or 10 CFR 50.59, "Changes, Tests, and Experiments," that is unavailable or deficient.

Section 3.8 of Part 9900 covers the definition of operability. The definition includes the following statement:

In order to be considered operable, an SSC must be capable of performing the safety functions *specified by its design, within the required range of design physical conditions, initiation times, and mission times.* [Emphasis added]

Section 4.0 of Part 9900 states the following:

Determinations of operability are appropriate whenever a review, TS surveillance, or other information calls into question the ability of SSCs to perform specified safety functions. The operability determination process is used to assess operability of SSCs and support functions for compliance with TS *when a degraded or nonconforming condition is identified for a specific SSC described in TS, or when a degraded or nonconforming condition is identified for a necessary and related support function.* [Emphasis added]

Section 3.10 of Part 9900 further defines "specified function/specified safety function" as follows:

The specified function(s) of the system, subsystem, train, component, or device (required by the definition of operability) is that specified safety function(s) in the CLB for the facility. In addition to providing the specified safety function required by the TSs definition of operability, a system is expected

<sup>1</sup> For example, plants with construction permits issued prior to May 21, 1971, may have been approved for construction based on the proposed General Design Criteria published by the Atomic Energy Commission (AEC) in the **Federal Register** (32 FR 10213) on July 11, 1967, sometimes referred to as the AEC Draft GDC.

to perform *as designed, tested and maintained*. When system capability is degraded to a point where it cannot perform with reasonable expectation or reliability, the system should be judged inoperable, even if at this instantaneous point in time the system could provide the specified safety function. [Emphasis added]

Thus, an operability determination (or functionality assessment) is performed upon identification of a degraded or nonconforming condition, including any nonconforming condition with a GDC included in either the CLB for an SSC described in TS or for a necessary and related support function required by the definition of operability. If the licensee determination concludes that the TS SSC is nonconforming but operable or the necessary and related support function is nonconforming but functional, it would be appropriate to address the nonconforming condition through the licensee's corrective action program. As stated in Section 6.3 of Part 9900:

The purpose of an operability determination is to provide a basis for making a timely decision on plant operation when a degraded or nonconforming condition is discovered. Corrective actions taken to restore full qualification should be addressed through the corrective action process. The treatment of operability as a separate issue from the restoration of full qualification emphasizes that the operability determination process is focused on safe plant operation and should not be impacted by decisions or actions necessary to plan and implement corrective action (i.e., restore full qualification).

*Example: Operability Determination for a Nonconformance with GDC 2 for Natural Phenomenon*

The following example discusses a nonconforming condition that involves a failure to meet the current licensing basis because of improper construction:

As indicated in the January 24, 1994, memo, the design bases for protection against natural phenomena (GDC 2), when included in the CLB, are inherently considered in the operability of safety-related SSCs that satisfy the criteria for inclusion in the TS. The Part 9900 operability determination process should be entered when a licensee identifies any nonconformance with GDC 2 or its equivalent, as incorporated into a plant licensing basis (e.g., nonconformance with the CLB for protection against flooding, seismic events, tornadoes, etc.). Criterion 2 of the GDC states:

Design bases for protection against natural phenomena. Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches

without loss of capability to perform their safety functions. The design bases for these structures, systems, and components shall reflect: (1) Appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area, with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated, (2) appropriate combinations of the effects of normal and accident conditions with the effects of the natural phenomena and (3) the importance of the safety functions to be performed.

Licensees can implement GDC 2 in the design by specifying design bases for combinations of normal and accident conditions to protect SSCs from the effects of natural phenomena. Failure to meet GDC 2, as described in the licensing basis should be treated as a nonconforming condition and is an entry point for an operability determination for any impacted TS-required SSC or a necessary and related support function.

For example, if a licensee with GDC 2 in its CLB identified that the exhaust stacks for the emergency diesel generators (EDGs) were not protected from the impact of tornado missiles, then this condition would call into question the operability of the EDGs. EDG operability is called into question because the exhaust stacks are an integral component of the EDGs, which, if crimped by a missile, could prevent the EDGs from performing their specified safety function. Accordingly, the licensee should then enter the operability determination process to evaluate the impact of not meeting the CLB requirement for tornado missile protection. If the licensee's evaluation concludes that the EDGs are inoperable, then the licensee must enter its TS and follow the applicable required actions. As stated in Section 7.3 of Part 9900, the licensee may implement compensatory measures to restore "inoperable SSCs to an operable but degraded or nonconforming status. In general, these measures should have minimal impact on the operators or plant operations and should be relatively simple to implement." If the licensee successfully implements compensatory measures to restore the inoperable EDGs to an operable but nonconforming status; or if the licensee's operability determination evaluation concludes that the EDGs are operable and nonconforming, then the licensee should use its corrective action program to bring the EDGs back into conformance with the CLB.

#### Summary

In summary, TS SSCs must be capable of performing their specified safety function (i.e., be operable or have

operability) whenever a plant is operating in the modes and other specified conditions of the applicability of TS limiting conditions for operation. In addition to providing the safety function, a system is expected to perform as designed, tested, and maintained. Any nonconformance with a GDC in the CLB has the potential to negatively impact the operability of a TS SSC and must be evaluated to determine if the nonconforming condition has rendered any TS SSC inoperable. When system capability is degraded to a point in which it cannot perform with reasonable expectation or reliability, the system should be judged inoperable, even if the system could provide the specified safety function at this instantaneous point in time.

#### Backfit Discussion

This RIS provides information concerning the NRC staff position on the relationship between Appendix A to 10 CFR part 50 and 10 CFR 50.36 so that the stakeholders may understand the requirements of the regulations more broadly. This RIS is identical to earlier NRC positions on the relationship of the GDC and the TS 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

[Discussion to be provided in final RIS]

#### Congressional Review Act

[Discussion to be provided in final RIS]

#### Paperwork Reduction Act Statement

This RIS does not contain any new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collection requirements under 10 CFR part 50 were approved by the Office of Management and Budget, control number 3150-0011.

#### Public Protection Notification

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

### III. Public Meeting

The NRC plans to hold a public meeting on August 8, 2012, to discuss the draft RIS and to obtain feedback from members of the public. The public meeting notice is available electronically under ADAMS Accession No. ML12188A402. In addition, the meeting agenda will be posted on the NRC's Public Meeting Schedule Web site at <http://www.nrc.gov/public->

*involve/public-meetings/index.cfm*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been cancelled or rescheduled, and the time allotted for public comments can be obtained from the Public Meeting Schedule Web site.

Dated at Rockville, Maryland, this 24th day of July 2012.

For the Nuclear Regulatory Commission.

**David L. Pelton,**

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

[FR Doc. 2012-18639 Filed 7-30-12; 8:45 am]

**BILLING CODE 7590-01-P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Parts 700, 701, 741 and 750**

**RIN 3133-AD97**

#### **Definition of Troubled Condition**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** NCUA proposes to amend the definition of “troubled condition” as that term appears in § 701.14 and elsewhere in NCUA’s regulations. Generally, under the current definition, only a state supervisory authority (SSA) may declare a federally insured, state-chartered credit union (FISCU) to be in “troubled condition.” The proposal expands the definition to permit either NCUA or an SSA to declare a FISCU to be in “troubled condition.”

**DATES:** Comments must be received on or before October 1, 2012.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

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

- *NCUA Web Site:* <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx>. Follow the instructions for submitting comments.

- *Email:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name]—Comments on Notice of Proposed Rulemaking for Parts 700, 701, 741 and 750” in the email subject line.

- *Fax:* (703) 518-6319. Use the subject line described above for email.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- *Hand Delivery/Courier:* Same as mail address.

**Public Inspection:** You can view all public comments on NCUA’s Web site at <http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx> as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518-6546 or send an email to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Steven W. Widerman, Staff Attorney, Office of General Counsel, at the above address or by telephone: (703) 518-6557.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

1. *Notification and Disapproval of Change in Officials.* In 1989, the Financial Institutions Reform, Recovery and Enforcement Act, Public Law 101-73, 103 Stat. 183 (1989), amended the Federal Credit Union Act (the Act) to require a federally insured credit union, under two conditions, to notify NCUA prior to adding or replacing any individual serving as a member of the board of directors or of a committee, or employed as a senior executive officer (together, officials). 12 U.S.C. 1790a. One condition is if the insured credit union has been chartered less than 2 years. 12 U.S.C. 1790a(a)(1). The other condition is if the insured credit union “is in troubled condition, as determined on the basis of such credit union’s most recent report of condition or report of examination.” 12 U.S.C. 1790a(a)(2).

An insured credit union that meets either condition may not add or replace an official if the NCUA issues a Notice of Disapproval in response to a notification of a change in officials. 12 U.S.C. 1790a(b). NCUA may disapprove an individual when “the competence, experience, character, or integrity of the individual \* \* \* indicates that it would not be in the best interests” of the credit union’s members or the public for the individual to serve. 12 U.S.C. 1790a(e). The credit union may appeal the disapproval to the NCUA Board. 12 CFR 747.904.

2. *Current Definition of “Troubled Condition”.* To implement the notification requirement, the Act required NCUA to prescribe by regulation a definition for the term “troubled condition.” 12 U.S.C. 1790a(f). Since 1990, the NCUA Board has defined a natural person credit

union in “troubled condition” as either: (1) A federal credit union that has been assigned a “4” or “5” composite CAMEL rating by NCUA; (2) a FISCU that has been assigned a “4” or “5” composite CAMEL rating by its SSA; (3) a FISCU that has been assigned a “4” or “5” composite CAMEL rating by NCUA based on core workpapers received from an SSA; or (4) a federal credit union or FISCU that has received special assistance under sections 208 or 216 of the Act to avoid liquidation. 12 CFR 701.14(b)(3); 55 FR 43086 (Oct. 26, 1990).

In 1999, the NCUA Board adopted a separate definition of “troubled condition” for corporate credit unions in order to conform to the Corporate Risk Information System (CRIS). 64 FR 28715 (May 27, 1999). Under that definition, a corporate credit union that is in “troubled condition” is either: (1) A corporate federal credit union that is assigned a “4” or “5” CRIS rating by NCUA in either the Financial Risk or Risk Management composites; (2) a corporate FISCU that is assigned a “4” or “5” CRIS rating by its SSA in either the Financial Risk or Risk Management composites or, if the state has not adopted CRIS, is assigned a “4” or “5” composite CAMEL rating by its SSA; (3) a corporate FISCU that is assigned a “4” or “5” CRIS rating in either the Financial Risk or Risk Management composites by NCUA based on core workpapers received from an SSA in a state that does not use either the CRIS or CAMEL rating systems; or (4) a corporate federal credit union or corporate FISCU that has received special assistance under sections 208 or 216 of the Act to avoid liquidation. 12 CFR 701.14(b)(4).

The “troubled condition” definitions for natural person credit unions and corporate credit unions have until now remained unchanged through several modifications to other parts of § 701.14,<sup>1</sup> and the definitions have since been incorporated by reference in parts 711, 741, 747 and 750 of NCUA regulations.

##### **II. Proposed Rule**

###### *1. Part 701—Proposed Definition of “Troubled Condition”*

The proposed amendments to the definition of “troubled condition” primarily affect natural person FISCUs and corporate FISCUs. Under current

<sup>1</sup> 59 FR 36042 (July 15, 1994) (change of NCUA address); 60 FR 31911 (June 19, 1995) (correcting U.S. Code citation); 66 FR 65622 (Dec. 20, 2001) (substitution of new § 216 for repealed § 116 of the Act); 69 FR 62562 (Oct. 27, 2004) (commencement of service while notification is pending); 75 FR 34620 (June 18, 2010) (changed “Camel” to “CAMEL”).