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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 21, 1997

MEMORANDUM TO: ~~David L. Morrison~~, Director
Office of Nuclear Regulatory Research

FROM: Frank J. Miraglia, Acting Director *Frank J. Miraglia*
Office of Nuclear Reactor Regulation

SUBJECT: COMMENTS ON THE RULEMAKING PLAN: RESPIRATORY PROTECTION
(SUBPART H AND APPENDIX A TO 10 CFR PART 20)

Your October 30, 1996, memorandum to me and other Office Directors asked for concurrence on the subject rulemaking plan. On November 19, NRR staff and management met with NMSS, OE, OGC, and your management and staff to discuss NRR positions and problems with the RES-proposed rulemaking plan. At that meeting, it was evident that the NMSS and NRR staff shared a common view that the proposed plan was not supportable (the NMSS Paperiello-Morrison, November 20, 1996, memorandum documents their comments on the plan). Thus, NRR does not concur with the plan, as written. Our reasons are discussed below.

Your proposed rulemaking plan presents several problems for NRR. We do not support the proposed relocation of Appendix A to Part 20 (which provides specific, numerical, assigned protection factors (APFs) for classes of respirators) to a regulatory guide. From an inspection and enforcement perspective, APFs must continue to be assigned by the NRC in Part 20. As you know, unless licensees formally commit to regulatory guides, these guides can not be used as requirement documents. Since nuclear power reactor licensees will not volunteer to commit to regulatory guides, your proposal could lead to licensees using non-conservative APFs and our inspectors would not have recourse to an effective enforcement tool. As was discussed in the November meeting, APFs are established by a group of experts and published in consensus industry ANSI standards. These APFs are intended to be conservative, and are used by all industries across the country. Licensees should not have the option of using APFs inconsistent with the conservative ANSI values without prior NRC approval (as provided by 10 CFR 20). Finally, licensees are allowed to use air sampling data and the respirator's APF to establish worker intakes (and thus doses). In the vast majority of cases, licensees use this internal dose assignment method since it is more economical than analytical bioassay procedures. Given this use of APFs, we believe that they must remain in the regulations.

As to the need to issue an Information Notice to inform licensees of the general reduction in APFs for certain classes of respirators, we see little benefit in a notice that would repeat information that has been common knowledge in the power reactor arena since the issuance of ANSI-Z88.2-1992 (which was administratively delayed for two years, but the technical information was readily available to industry in 1990). As we discussed at the November meeting, the most frequently used respirators' APFs actually increased by a factor of two, while the APFs for some very infrequently used types decreased. For example, given that the level of airborne radioactive

material respiratory hazards are generally not high (the highest measured airborne particulate levels (for planned work using respirators) for a BWR in the past four years was less than 25 times the Part 20 DAC), a decrease in the APF from 2000 to 1000 for airline respirators, as proposed, would have essentially no measurable effect on the level of wearer protection. The most significant safety issue involves proper worker protection for abrasive blasting respirators, where the worker hazard is silicosis (a non-radiological hazard). This important safety information was published by NIOSH in the form of Respirator User Notices (similar to our Bulletins), and provided to selected NRC licensees (as designated by NMSS and NRR), on two separate occasions in the past several years. NRR sees no need to repeat NIOSH's work, given that sand blasting is an infrequent activity at power plants. However, NRR would not object if NMSS wishes to send a generic communication to its licensees that reinforces the NIOSH efforts and alerts their licensees of the NRC plans to revise the respiratory regulations and guidance.

Another problem noted in the proposed rulemaking plan involved allowing the use of disposable respirators outside of the NRC regulations. RES believes that the current regulations do not prohibit the use of disposables as long as no credit is taken for any wearer protection. The regulations and the statements of consideration speak directly to this point, stating that a licensee comply with the regulations when wearing any respirator, regardless of type or whether credit is taken (or allowed) for the protection provided. When Subpart H was revised in 1991, the staff made an effort to close the loophole that allowed respirators to be used outside the regulations if no protection credit was taken. Therefore, we believe that a reasonable way to allow use of these newly-developed disposable respirators is to assign an APF of 1, and allow reasonable relief from a few of the regulatory requirements (e.g., no need for medical evaluation). The workers would still be required to be trained on their use. Subsequent to the November meeting, OGC issued an interpretation that supports the Program Offices' position -- the current regulations do not allow the use of disposables (December 23, 1996 memorandum, (Treby-Morris)).

The existing draft rule/regulatory guide package proposes to eliminate eleven requirements and add new flexibility in the form of authorization to use a new class of respirators (disposables) within the regulatory framework. Additionally, with the 1991 revision of Part 20, Subpart H, the NRC took a step in the direction of performance-based regulations. Based on the TEDE ALARA provision in Part 20, power reactor licensees have been making decisions whether or not to use respirators for a given job, based on balancing internal and external worker doses. As a result, respirator use has been reduced significantly.

Instead of workers being issued thousands of respirators during the course of a refueling outage, many licensees now issue less than 100. This reduction in respirator usage has made for a much more efficient work program without significant increases in worker intakes. NRR believes that the current Subpart H represents a success in the area of performance-based regulations.

NRR has been actively supporting your Office's ongoing activities to update the rule and revise the regulatory guide and supporting NUREG. NRR, NMSS and RES staff have worked closely together and reached a consensus as to the technical and policy issues that need to be addressed. As we discussed at the meeting, and as a result of the collaborative efforts of our staffs, a draft rule package, including the draft regulatory guide, is essentially ready for public review. NRR supports moving quickly to issue the draft rule and guide package for public comment.

If you have any questions concerning our comments and position, please contact Charles Miller, Emergency Preparedness and Radiation Protection Branch Chief.

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