



October 1, 1990

RULEMAKING ISSUE

SECY-90-336

(Notation Vote)

For: The Commissioners

From: James M. Taylor, Executive Director for Operations
Harold R. Denton, Director, Office of Governmental and Public Affairs

Subject: IMPLEMENTATION DATE FOR 10 CFR PART 20 REVISION

Purpose: To request the Commission approve extending the implementation date of the revised Part 20.

Summary: Both the nuclear industry and the Agreement States have expressed difficulties in meeting a January 1, 1992 implementation date for the revised Part 20. This paper recommends extending the effective date from January 1, 1992 until January 1, 1993 for NRC licensees and January 1, 1994 for the Agreement States.

Background: In SECY-88-315 (November 3, 1988), the staff recommended an effective date for implementation of Part 20 of January 1, 1991. The 1991 date would have permitted 2 years for implementation from the staff's anticipated publication of the final rule in early 1989.

A Note in SECY-89-267 (August 27, 1989), proposed that the implementation date for the revised Part 20 be extended to January 1, 1992 in order to compensate for the delay associated with resolving the two issues discussed in that paper. At the time that this recommendation was made, this date would have permitted 2 full years for implementation assuming publication of the final rule late in 1989.

The Staff Requirements Memorandum of July 30, 1990 on SECY-88-315, SECY-89-267, and SECY-90-237 contained the Commission's decision to adopt the January 1, 1992 date as the effective date of the Part 20 rule. The SRM also directed the staff to complete, to the maximum extent practicable, development of

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the necessary regulatory guidance documents by January 1, 1991. Since that time, there have been three communications to the NRC, one from Nuclear Management and Resources Council (NUMARC, Enclosure A) and two letters from the Organization of Agreement States and the Conference of Radiation Control Program Directors (Enclosures B and C), which indicate problems in meeting the January 1, 1992 date.

Discussion:

I. Problems in Meeting the 1992 Date

The staff believes that the Part 20 revision process should be concluded in an expeditious manner. However, in consideration of the comments made by NUMARC, the Organization of Agreement States and the Conference of Radiation Control Program Directors, as well as the number of implementation documents that must be prepared, the staff also believes that a 14-month implementation period entailed by the January 1, 1992 effective date may be too restrictive.

A specific concern regarding the lead time for the availability of regulatory guides has been raised by NUMARC in their request for an extension of the implementation date (Enclosure A). The staff agrees with NUMARC that the shortness of the current implementation period may adversely impact the implementation effort. Given the promulgation of the final rule in October 1990, the January 1, 1992 date now only provides 13-14 months rather than 24 months for licensee modification of procedures and technical documents that was intended by the staff when it proposed the January 1, 1992 date in 1989. An additional year would make the implementation process more orderly and ensure that all procedures could be conformed to the final Regulatory Guides rather than relying in part on draft Regulatory Guides.

II. Agreement States

Information received from the Organization of Agreement States (Enclosure B) and from the Conference of Radiation Control Program Directors (CRCPD, Enclosure C) indicates that a significant number of States would not be able to meet an implementation date of January 1, 1992, and would have difficulty in meeting a January 1, 1993 date. Part of the problem for most Agreement States is that the administrative process for the revision of rules is more complex than for the NRC and may entail public and legislative hearings as well as legal and technical reviews.

Many Agreement States rely on the Suggested State Regulations (SSRs) as a basis for their rulemaking to incorporate NRC regulations into the State codes. The SSRs are prepared by the Conference of Radiation Control Program Directors with NRC input and concurrence. The SSRs are needed by the States because their regulatory responsibilities are often broader than NRC's, i.e., they include X-rays and naturally-occurring and accelerator-produced radioactive materials (NARM), and portions of their regulations may apply to several sources of exposure. State Programs on a priority basis will make a standardized format of Part 20 available on computer disks in advance of the modified Suggested State Regulations to assist the Agreement States in revising their regulations.

Current NRC policy for Agreement State conformance with new NRC regulations requires compatibility within three years from the date of adoption by NRC. The complexity and timing of the administrative processes in some States, even with the above noted assistance from SP, would give January 1, 1994 as the earliest practical date for Agreement State conformance.

III. Choice of Implementation Dates

Based upon the difficulties outlined by NUMARC, the Conference of Radiation Control Program Directors, and the Organization of Agreement States in meeting the current schedule, the staff believes that an extension of the effective date for the Part 20 revision is warranted. A delay in the implementation date until January 1994 would permit both NRC and Agreement State licensees to come into compliance with revised Part 20 regulations at the same time, as most Agreement States will have made conforming changes to their regulations by then. Furthermore, the 1994 date would uphold the NRC's past policy of providing the Agreement States three years from the date of issuance of the NRC rule to achieve compatibility. However, the staff does not believe that much of a delay in the implementation date for NRC licensees is necessary. The necessary guidance for implementation of the revised Part 20 will be available in final form by the end of 1991. An implementation date of January 1, 1993, would provide a minimum full year's access to NRC guidance on implementation before the rule went into effect. Lack of agreement between NRC regulations and those of the Agreement States commonly occurs because of the 3-year lead time allowed to the States following issuance of the NRC rule.

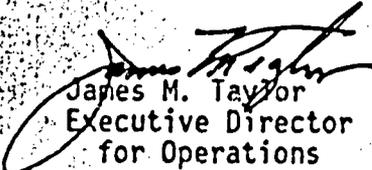
The quarterly external dose limits in the current Part 20 have been replaced with annual limits on total effective dose

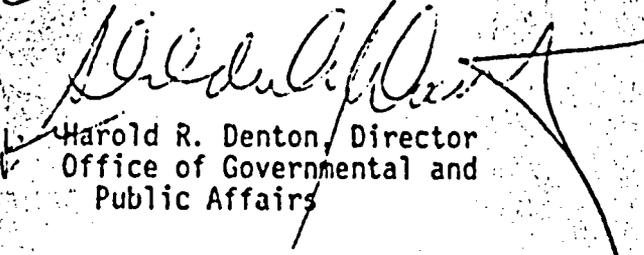
equivalent in the revised rule. Licensee annual reports traditionally have been required at the end of each calendar year. Hence, implementing the revised Part 20 at the beginning of a calendar year would minimize inconsistencies in and potential disruption of licensee record and reporting systems. However, while the dose limits and the methods of calculating doses are different in revised Part 20 and the existing rule, as was noted in SECY-88-315 (Enclosure 3, p.33) the staff believes that licensees should be allowed to implement the revised Part 20 earlier than the effective date. Any additional administrative burdens which this would entail such as maintaining two sets of exposure records for the period in which conversion occurs, being subject to changing Appendix B effluent limits which are annual averages, and the imposition of a fetal dose limit, would be assumed on a voluntary basis by those licensees who are prepared to implement the revised Part 20 on an earlier date than required by the Commission. As long as the licensee informs NRC of its election to implement revised Part 20 earlier than the effective date, NRC can assure that its records for that licensee reflect this election. However, if a licensee elects to implement revised Part 20 earlier than the effective date, the whole of revised Part 20 will be applicable to that licensee after the licensee's implementation date. Also, while starting at the beginning of a calendar year would minimize the need to prorate the new more restrictive dose limit and would ensure uniformity of records over the annual compliance period, the staff believes that records can be appropriately maintained under revised Part 20 by those licensees choosing to do so.

- Recommendations:
- (1) That the Commission approve a delay in the required implementation date for the revised Part 20 for NRC licensees from January 1, 1992 until January 1, 1993 and for the Agreement States until January 1, 1994. Both EDO and GPA recommend that these extensions of the effective date be granted. A time extension would permit NRC licensees to have access to the final Regulatory Guides for at least a full year in order to incorporate them into procedures. The effective date provision would permit NRC licensees to elect to implement revised Part 20 earlier than January 1, 1993.
 - (2) That the Commission approve incorporation into the Federal Register Notice for the final rule a statement that NRC licensees may implement the final Part 20 in its entirety at a date earlier than the required implementation date.

Coordination: OGC has no legal objection to this recommendation.

- Notes:
1. The reply in Enclosure D would be sent to NUMARC.
 2. State Programs will transmit the Commission's decision to the Organization of Agreement States and the Conference of Radiation Control Program Directors.


James M. Taylor
Executive Director
for Operations


Harold R. Denton, Director
Office of Governmental and
Public Affairs

Enclosures (4):

- A. NUMARC letter
- B. August 7, 1990 letter from Greta Dicus, Chairman Organization of Agreement States
- C. August 9, 1990 Letter from Diane Tefft, Chairperson, Conference of Radiation Control Program Directors
- D. Draft NRC Response to NUMARC

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Tuesday, October 16, 1990.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, October 9, 1990, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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NUMARC LETTER

ENCLOSURE A

NUMARC

NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

1776 L Street, N.W. • Suite 300 • Washington, DC 20036-2496
(202) 872-4280

Byron Lee, Jr.
President & Chief
Executive Officer

July 27, 1990

The Honorable Kenneth M. Carr
Chairman
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Chairman Carr:

The purpose of this letter is to bring to your attention our concerns regarding the implementation date for the revised 10 CFR 20. NUMARC met with the NRC staff on July 10, 1990, to discuss mechanisms for providing input into the development of the Regulatory Guides associated with the revised rule. During this meeting the NRC staff indicated the current implementation date of the revised rule is January 1, 1992. The staff also said that publication of the revised rule is not expected until some time in August of this year. This is only sixteen months before the revised rule is proposed to take effect. We continue to be very concerned with the effect that such a compressed schedule will have on successful implementation of the revised rule by the nuclear power industry and request that the implementation date be revised for the following reasons.

The proposed rule, published in the Federal Register on January 9, 1986 (51 FR 1092), provided a five year implementation schedule from publication of the final rule. Our previous correspondence of April 26, 1988, and October 20, 1988, and our testimony presented to the Commission on November 10, 1988 emphasized that a five-year implementation period is essential due to the complexity of the rule.

Draft Regulatory Guides have not been made available for public comment and, we understand, are not scheduled to be available until January, 1991. Allowing for a reasonable public comment period, the final Regulatory Guides will not be available until approximately six months before the revised rule is to take effect. Such a schedule is not conducive to effective and efficient implementation of this important rule. Previous industry comments stressed the importance of having the Regulatory Guides available within the first three years of the recommended five year implementation period to allow sufficient review, understanding, and implementation by the industry. Your concern, expressed in the November 10, 1988 Commission briefing on Part 20, was, "... whether we [NRC] shouldn't make the effective date five years after the proposed rule or whether we should give some consideration to, since we've got a lot of work to do, taking a look at making the effective date after these things [Regulatory Guides] get on the street."

Honorable Kenneth B. Carr
July 27, 1990
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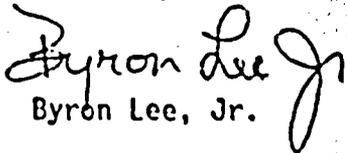
The compressed schedule will adversely affect correct and consistent implementation of the rule. To support changes to their radiation protection programs, licensees will have to make changes to computer software and record keeping practices, revise procedures and provide advance training for their personnel. Consistent implementation, by all licensees, is critical in assuring that worker dose is accurately recorded. Record keeping has been identified as the single most costly aspect of the revised rule. A recent study on implementation costs, presented at the June 1990 Health Physics Society meeting, projected initial costs of \$1.8 million for a single unit nuclear power plant. Compressing the implementation schedule will likely increase this cost.

Agreement States must conform their regulations to the revised 10 CFR 20 within three years from its effective date. Many utilities hold Agreement State licenses. The possibility of requiring operation of radiation protection programs under two different systems of regulation during this three year period exists. This inconsistency should be avoided.

In summary, implementing the revised 10 CFR 20 is a major undertaking that needs to be done right. Because the final rule will not be published before August, 1990 and the draft Regulatory Guides will not be available for public comment until January, 1991, proper implementation will be adversely affected by the current schedule. We strongly urge reconsideration of the rule's effective implementation date and request that this date be approximately three years after publication of the final Regulatory Guides or conformation by all the Agreement States, whichever is later.

We look forward to continued cooperation in the implementation of the revised 10 CFR 20 and would be pleased to meet with the Commission to discuss our concerns. If there are any questions, please contact Joe Colvin, Tom Tipton or me.

Sincerely,


Byron Lee, Jr.

BL/JJM:mls

cc: Commissioner Kenneth C. Rogers
Commissioner James R. Curtiss
Commissioner Forrest J. Remick
Mr. James M. Taylor
Dr. Thomas E. Murley
Mr. Eric S. Beckjord

AUGUST 7, 1990
LETTER FROM
GRETA DICUS, CHAIRMAN
ORGANIZATION OF AGREEMENT STATES

ENCLOSURE B



BILL CLINTON
GOVERNOR

Arkansas DEPARTMENT OF HEALTH

4815 WEST MARKHAM STREET • LITTLE ROCK, ARKANSAS 72205

TELEPHONE AC 801 661-2000

M. JOYCELYN ELDERS, M.D.
DIRECTOR

August 7, 1990

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Kammerer:

As the Commission is in the process of taking final action on 10 CFR Part 20, and as an implementation date of January 1, 1992 has been suggested, I was asked by Mr. Vandy Miller to determine the position of the Agreement States with respect to the January 1, 1992 date. This letter communicates my findings.

More than half of the Agreement Programs (52%) will not be able to implement the new regulations by this date. In order to have an effective program, several States indicated 2-5 years would be needed to have regulations in place and to provide the training/guidance needed for staff and licensees. 17% of the Agreement States are uncertain of their ability to implement the revision by 1-1-92. Most of these programs have indicated they would have to start the process now or would simply put "something in the regulations" and revise them later. Approximately 28% of the States have indicated they could meet this date. In many of these States, rule revisions are already underway which facilitates incorporation of another revision. In other states, rule revision is a relatively simple process. Unfortunately, this is not the case for most states.

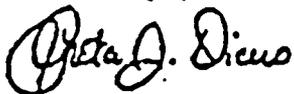
To further evaluate the selection of an appropriate implementation date, it is important to assess two areas:

First, many programs rely on the format of the Suggested State Regulations (SSR). We are advised that new SSRs will take from 12-18 months to be written once 10 CFR Part 20 is published in final form. Many states have complex administrative processes to revise regulations: public hearings, legal reviews, and/or legislative reviews. In some cases, these processes cannot get underway until the SSRs are available. While guidance and training are also required, it appears that development of guidance documents and training programs has been delayed. Development and implementation of these programs concurrent with rule revision processes further complicates the situation.

Second, both Agreement and Non-Agreement Programs have regulatory jurisdiction over a broader base of radiation sources (i.e., NORM and radiation producing machines) than does the NRC. This broader regulatory base translates to our impacting a vastly larger number of entities which gives rise to a commensurate increase in staff effort. I have discussed this with Diane Tefft, CRCPD Chairperson, who has directed CRCPD to obtain comments from Non-Agreement Programs. For the intent of the revised 10 CFR Part 20 to be met, all sources of radiation must be subject to the applicable parts of the regulation. The impact on Non-Agreement Programs must therefore also be included in a decision on a uniform implementation date.

In summary, I believe that our Radiation Control Programs are in agreement with the merits and necessity of a revision of this important radiation standard. In fact, our belief in the importance of the standard is probably central to our desire that it not be implemented in a haphazard fashion. We trust that the Commission will agree.

Sincerely yours,



Greta J. Dicus, Director
Division of Radiation Control
and Emergency Management
Chairman, Organization of Agreement States

GJD:ap

cc: Agreement States
Maine
Michigan
Oklahoma
Pennsylvania
C. Hardin

AUGUST 9, 1990

LETTER FROM

DIANE TEFFT, CHAIRPERSON;

CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS

ENCLOSURE C

August 9, 1990

Carlton Kammerer, Director
State Programs
Office of Governmental and Public Affairs
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Kammerer,

It is my understanding that although the Commission has set January 1, 1992 as the date for implementing the provisions of the revised 10 CFR 20, and related Parts, that the Commission may be willing to reconsider this 1992 date if there is adequate justification to do so. This letter is to provide such justification.

It is the recommendation of the Executive Board of the CRCPD that the implementation date be extended to at least January 1, 1994. This would allow for a more uniform implementation of the new provisions of Part 20 throughout the United States.

There appears to be two main issues in considering the implementation of the revised Part 20 by the states. The first issue is the revision of state regulations to conform with the new provisions. The second issue is the training of the state regulatory staff, as well as the regulated community, to understand the requirements of the new provisions.

It is extremely important for the NRC to be aware that the provisions of Part 20 will not only affect NRC and Agreement State licensees, but will also affect the Non-Agreement States who regulate the users of radiation producing machines and NARM.

Rationale for Extending Implementation Date

1. Approximately 55% of Agreement States have stated they cannot implement the new regulations by 1-1-92. (Dicus letter of August 7th)
2. To have an effective program, several Agreement States have indicated that 2-5 years are needed to have regulations in place and be properly trained to implement the provisions. (Dicus letter of August 7th.)
3. Most states rely on the Suggested State Regulations (SSRCR) for guidance in revising their regulations, and since the process to revise the SSRCR may take from 12 to 18 months to be in final form, this in itself would require the extension of the implementation date.
4. At the present time the availability of sufficient training resources appears limited, if not totally inadequate. Specifically, the only known sources of training on the revisions of Part 20 are by Harold Peterson of the NRC, Bob Alexander and John Poston. Only one of the major private firms (Technical Management Services) or universities recently contacted have classes for this subject. Since Mr. Peterson

some Agreement State staff, this leaves limited training availability for Non-Agreement States.

In the area of training, I have asked our Training and Communication Committee to consider if the CRCPD can play a role in providing some type training for Non-Agreement States, as related to the amendments to Part 20.

Also, as related to training or information for the user, it is our understanding that the NRC is developing regulatory Guides for the radioactive material user. Since the radiation producing machine is only an external exposing device, similar guidance, but less involved, is needed. Who will develop such guidance for these users, and when will such be available? Although this is not the responsibility of NRC, I think you can see the point for extending the implementation date to assure consistency for all ionizing radiation sources.

5. Since implementation of the revisions of Part 20 will affect both Agreement and Non-Agreement States, and affect not only users of radioactive materials, but users of radiation producing machines, we have much concern about consistent, uniform application of the provisions of Part 20 nationwide. It is very likely that if the January 1, 1992 date is the final date for implementation, that uniformity will not occur. To the contrary, some states will be applying the new provisions of Part 20, while other states will be applying the provisions of the existing Part 20. This can only make for a chaotic situation, leaving the public and industry again critical of the government regulatory process.

6. The Office of Executive Director recently conducted a survey of Non-Agreement States relative to their intentions on implementing the revisions of Part 20. Of those which had responded by the date of this letter (10), eight indicated that they could not implement the provisions by January 1, 1992.

I urge that these comments will be considered by the NRC in the establishment of the final date for implementation.

Yours very truly,

Original signed by Diane Tefft

Diane E. Tefft
Chairperson

cc: Executive Board
Office of Executive Director

DRAFT NRC RESPONSE TO NUMARC

ENCLOSURE D



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

Mr. Byron Lee, Jr., President
Nuclear Management and Resources
Council
Suite 300
1776 Eye Street, N.W.
Washington, D.C. 20006-2496

Dear Mr. Lee:

The Commission agrees with the position stated in your letter of July 27, 1990, that "implementing the revised 10 CFR Part 20 is a major undertaking that needs to be done right." Despite the lengthy time it has taken to bring this rulemaking proceeding to conclusion, we share your concerns regarding the short time available from the publication of the final rule until the implementation date.

The NRC staff already have begun training activities related to the revised Part 20. The most notable of these is the video teleconference sponsored by our Office of State Programs on September 26, 1989, entitled, "An Overview of the NRC's Revised 10 CFR Part 20." Although this teleconference was intended primarily for the Agreement States, non-Agreement States and numerous licensees also watched it. There are also commercial videotapes and training courses on the revised Part 20. The NRC staff has presented courses or lectures on the revised Part 20 at the national and mid-year meetings of the Health Physics Society, the National Meeting of the Industrial Hygiene Conference, and smaller groups such as the Virginia Chapter of the Health Physics Society and the Army Industrial Hygiene Agency. Additional training and workshops will be carried out in 1991. Despite these activities, we share your concerns regarding the adequacy of the period for training workers.

Because of concerns regarding the adequacy of the time to finalize implementation of Part 20, the Commission has reconsidered the effective date of Part 20 and has decided to extend the NRC implementation date to January 1, 1993. This will give a full year for the necessary final Regulatory Guides to be incorporated into operating procedures and more time for training of licensees and NRC inspectors in the new rule.

If a licensee elects to implement the revised Part 20 earlier than the effective date of January 1, 1993, the whole of the revised Part 20 will be applicable to that licensee's operations after their date of implementation. Although starting at the beginning of a calendar year would minimize the need to reconcile quarterly and annual dose limits, we believe that the dose records can be appropriately maintained by those licensees that elect to implement Part 20 early.

Mr. Byron Lee, Jr.

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We will not be able to have the Agreement States implement regulations comparable to the revised Part 20 on the same schedule as NRC licensees. There is an existing NRC policy statement which permits Agreement States 3 years from the date of issuance of an NRC rule in order to implement comparable State regulations. Because of this provision, Agreement States will not implement the revised Part 20 until January 1, 1994. Although this might cause some concern for very few facilities where both an Agreement State and the NRC have regulatory authority, the actual impact should be small since only a few facilities fall into this class.

For the case mentioned, that of operation of radiation protection programs under two different systems of regulation, e.g., State-regulated radiographers working at a nuclear power plant site, controlling the exposures to in-plant workers and radiographers to 1.25 rems per quarter, would comply with both the revised and the existing Part 20 and the State regulations based upon the existing Part 20.

We look forward to continuing efforts to implement the revised 10 CFR Part 20 and welcome any further suggestions that you and your associates at NUMARC may wish to offer.

Sincerely,

Kenneth M. Carr