July 17, 2009

MEMORANDUM TO: Edwin M. Hackett, Executive Director
Advisory Committee on Reactor Safeguards

FROM: Timothy J. McGinty, Director /RA/ TBlount signed for
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

SUBJECT: ADVISORY COMMITTEE ON REACTOR SAFEGUARDS- REVIEW OF DIRECT FINAL/PROPOSED RULE TO AMEND INDUSTRY CODES AND STANDARDS, AMENDED REQUIREMENTS

The staff has prepared a direct final rule with a companion proposed rule to amend Title 10 part 50.55a of the *Code of Federal Regulations*, Industry Codes and Standards, Amended Requirements. The Nuclear Regulatory Commission (NRC) is using the direct final rule procedure to amend the reactor vessel head inspection requirements by revising the upper range of the percentage of axial flaws permitted in a specimen set used for the qualification of nondestructive examination systems (procedures, personnel and equipment), which are used in the performance of inservice inspection of pressurized water reactor (PWR) upper vessel head penetrations.

Enclosed is an information copy of the draft EDO Memorandum and accompanying *Federal Register* Notice (FRN) for this rulemaking.

The NRC published a proposed rule on April 5, 2007 (72 FR 16731) to incorporate by reference the 2004 Edition of Section III, Division 1, of the American Society of Mechanical Engineers (ASME) Boiler Pressure Vessel (BPV) Code, and the 2004 Edition of the ASME Operation and Maintenance (OM) Code to provide updated rules for constructing and inspecting components and testing of pumps, valves, and dynamic snubbers in light water nuclear power plants. The 72 FR 16731 rule, among other things, proposed augmented examination requirements of PWR vessel head penetrations by incorporation by reference ASME Code Case N-729-1, "Alternative Examinations Requirements for PWR Vessel Upper Heads with Nozzles Having Pressure Retaining Partial Penetration Welds, Section XI, Division I." For the augmented examination requirement, the NRC staff proposed the requirements for a specimen set used in performance of inservice inspection: "At least 30 percent, but no more than 60 percent of the flaws must be oriented axially." This requirement was similar to the specimen set distribution under Appendix VIII of Section XI of the ASME Code. During the public comment period, a stakeholder suggested a change to the above percentage of flaws in the proposed rule.

CONTACT: Manash K. Bagchi, NRR/DPR
301-415-2905

Upon review of the rationale for this comment, the NRC adopted and amended its regulation to incorporate this requirement in the final rule, which was published on September 10, 2008 (73 FR 52730). Following publication of the final rule, the stakeholder requested withdrawal of his recommendations with respect to the upper percentage of flaws that should be oriented axially because he identified an error in his original recommendation. Upon further review, the NRC concluded that the distribution range, modified by the stakeholders comment, continues to meet the NRC defined criteria for an effective qualification specimen set. Also, usage of the current rule's maximum axial flaw distribution range of 40 percent would require the creation of additional mockups that represents a burden increase with no significant safety benefits. Accordingly, the NRC concluded that the upper range of the qualification set axial flaw distribution should be changed from 40 to 60 percent.

The NRC is choosing the direct final rule procedure to issue this action because this action is minor, and is not expected to be controversial. This is because the change in the maximum axial flaws has no adverse impact on safety, and the NRC's action to change the current requirement of axial flaws distribution was initiated in response to a comment from the industry group responsible for the development of the welding qualification program for the industry. Second, the change represents a burden reduction for licensees. Accordingly, the NRC finds that there is good cause under the Administrative Procedure Act, 5 U.S.C. 553(b) (3) (B) for avoiding notice and opportunity for public comment on the direct final rule. The amendment to the rule will become effective 75 days after publication in the *Federal Register*. However, if the NRC receives significant adverse comments within 30 days after publication in the *Federal Register*, then the NRC will publish a document that withdraws this action. In that event, the comments received in response to this amendment would then be considered as comments on the companion proposed rule published elsewhere in the *Federal Register*, and the comments will be addressed in a later final rule based on that proposed rule.

This request is summarized as follows:

1. Title: Industry Codes and standards, Amended Requirements

2. NRR Task Leader/Contact: Manash Bagchi, DPR/PRAB - (301) 415-2905

3. Working Group: Jay Collins - NRR, John Tsao - NRR, Wallace Norris RES, Manash Bagchi-NRR, Geary Mizuno - OGC

5. Requested Action: For information only

6. Requested Completion Date: N/A

Enclosures:
1. EDO Memorandum
2. *Federal Register* Notice

cc: Les Cupidon, CRGR

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