



RULEMAKING ISSUE

(Notation Vote)

November 14, 1994

SECY-94-277

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: WITHDRAWAL OF ADVANCE NOTICE OF PROPOSED RULEMAKING,
"ACCEPTANCE OF PRODUCTS PURCHASED FOR USE IN NUCLEAR
POWER PLANT STRUCTURES, SYSTEMS, AND COMPONENTS"

Purpose:

To obtain the Commission's approval to publish the enclosed Withdrawal of Advance Notice of Proposed Rulemaking (ANPR) on the basis of conclusions drawn from requested public comment, discussions with industry and staff, and procurement dedication training.

This memorandum provides a final closeout in response to the staff requirements memorandum (SRM) dated April 11, 1990, and also closes out staff commitments in several Commission papers to continue consideration of whether rulemaking is needed.

Background:

From 1986 through 1989, the staff inspected 13 licensees' procurement and commercial grade dedication programs, finding major programmatic deficiencies and generating several enforcement actions. In response to the findings of these inspections, in January 1989, the staff developed "Advance Notice of Proposed Rulemaking [ANPR], 'Acceptance of Products Purchased

NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE
AVAILABLE

Contact:
Gregory Cwalina, NRR
(301) 504-2984

Ronald Frahm, Jr., NRR
(301) 504-2986

for Use in Nuclear Power Plant Structures, Systems, and Components'" (SECY-89-010), in which the staff sought public comments on the need for regulatory actions to effect improvements for procurement, receipt inspection and testing, and dedication programs. The ANPR was subsequently published in the Federal Register on March 6, 1989 (54 FR 9229). On February 21, 1990, the staff submitted "Advance Notice of Proposed Rulemaking, 'Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems, and Components'" (SECY-90-057), to summarize its analysis of the public comments on the ANPR and its actions regarding the proposed rulemaking. The staff concluded that (1) more regulatory guidance and direction may be necessary to ensure that the basic requirements for procurement and dedication are clearly stated and understood, (2) the NRC may not need to perform the rulemaking if the industry properly implemented the initiatives it had begun, and (3) the staff would monitor industry's efforts in order to determine if progress made by the industry warranted deferring or withdrawing the rulemaking.

On March 7, 1990, the NRC staff forwarded to the Commission SECY-90-076, "Inspection and Enforcement Initiatives for Commercial-Grade Procurement and Dedication Programs," in which the staff described its actions to defer programmatic inspections of licensees' procurement and dedication programs for about one year while monitoring the industry's developments, improvements, and initiatives in this area. The staff based its actions upon a commitment to improve commercial grade dedication and procurement programs, made throughout the industry with the efforts of the former Nuclear Management and Resources Council (NUMARC), now known as the Nuclear Energy Institute (NEI).

On August 24, 1990, the NRC staff forwarded to the Commission SECY-90-304, "NUMARC Initiatives on Procurement," in which the staff reported the status of NUMARC's initiatives on general procurement practices. The staff stated it would conduct assessments at selected sites to review the licensees' implementation of improved procurement and commercial grade dedication programs and assess improvements made in the areas covered by the NUMARC initiatives. The staff began the first of eight planned assessments on February 4, 1991.

On April 9, 1991, the staff issued Generic Letter 91-05, "Licensee Commercial-Grade Procurement and Dedication Programs," in which the staff expressed NRC positions regarding certain aspects of licensee procurement and dedication programs and discussed a number of deficiencies in licensees' commercial grade dedication programs noted during previous team inspections.

On September 16, 1991, the NRC staff forwarded to the Commission SECY-91-291, "Status of NRC's Procurement Assessments and Resumption of Programmatic Inspection Activity," in which the staff reported on the findings of its assessments from February

1991 through July 1991. The staff noted that it was resuming inspection and enforcement activities in December 1991. The staff's conclusion was that although improvements had been made in licensees' procurement and dedication programs, weaknesses in implementation still existed.

The staff began developing an inspection procedure (IP) and conducted five pilot inspections between December 1991 and June 1992. The staff continued to identify weaknesses in the implementation of licensee dedication programs. As a result of these inspections, the staff held numerous meetings with NUMARC, industry, and licensees between November 1992 and March 1993.

Weaknesses identified during the procurement assessments and pilot inspections were related to implementation of the programs (i.e., dedication of specific items), and not to the programs themselves. Adoption of the industry guidance has, for the most part, resulted in licensees having acceptable programs for the dedication of commercial grade items. These programs also adequately assure that counterfeit, substandard or fraudulently marketed materials will not be accepted for use. The staff's assessment and inspection activities did not identify any instances of counterfeit or fraudulent material being accepted for use by any of the plants examined.

Following the pilot inspections, the IP was revised, and in March 1993, the staff submitted the draft IP for public comment. In April 1993, the staff held a public workshop at which the draft IP and the various dedication issues were discussed. The public comment period ended in May 1993; June 1993 saw the completion of comment analysis and final revisions to the IP and dedication guidance. On November 8, 1993, the NRC staff issued the IP. Recent experience with the new IP demonstrated that the current inspection approach provides an effective means for assuring that licensee procurement and dedication activities will prevent the acceptance of counterfeit and fraudulent materials.

On July 28, 1994, the Office of Inspector General (OIG) issued an audit report which questioned the staff's rationale for discontinuing programmatic inspections in lieu of reactive inspections. The staff's response to the OIG audit will be addressed in a separate Commission Paper.

Discussion:

On the basis of the findings of the original inspections, assessments, and pilot inspections, the staff believes that problems identified with respect to the quality of items dedicated for use in safety-related applications are adequately addressed by the requirements of Appendix B to 10 CFR Part 50 and, for the most part, are problems of compliance, rather than of inadequate rules.

Before the inspection pause in 1990, the staff had proposed several enforcement actions in this area, based upon the requirements of Appendix B, and was considering several others. Subsequent clarifications of staff positions on compliance with existing regulations were issued during the inspection pause. Further, as discussed above, the NRC staff and the nuclear industry worked closely together to improve industry efforts in procurement and commercial grade dedication. As a result, there appears to be no need for new regulations addressed to the quality of items dedicated for use in safety-related applications.

Part of the staff's reason for originally proposing rulemaking was to reduce the likelihood of counterfeit or fraudulently marketed products from being accepted for use. The staff has issued numerous information notices regarding specific cases of fraudulent parts having been found in nuclear facilities, and guidance on how to detect them. Further, the staff has also issued two generic letters providing information regarding procurement program improvements to help prevent the acceptance and use of counterfeit or fraudulently marketed products. This issue is also addressed as part of the NUMARC Comprehensive Procurement Initiative. Finally, the Commission issued a rule change to 10 CFR Part 50 (§ 50.5, Deliberate misconduct) that gives the staff an additional regulatory tool to pursue cases in which a licensee contractor or subcontractor has deliberately supplied material, goods, or services that cause(s) or may cause the licensee to be in violation of a rule. A supplier providing counterfeit and/or substandard materials to be used in safety-related applications is subject to that rule. Therefore, additional rulemaking to specifically address fraudulent parts appears unnecessary.

Conclusion:

After reviewing the findings of the numerous assessments, inspections, and interactions with NUMARC and the nuclear industry, the staff concludes that the nuclear industry has made significant progress toward improving its procurement and commercial grade dedication programs. The staff will continue to monitor the industry's progress through the inspection process.

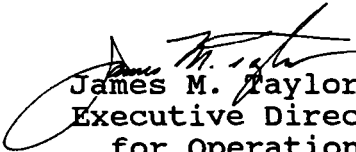
The staff believes that problems identified with respect to the quality of items dedicated for use in safety-related applications are adequately addressed by the requirements of 10 CFR Part 50, Appendix B.

Recommendation:

That the Commission approve publication of the enclosed Withdrawal of Advance Notice of Proposed Rulemaking in the Federal Register.

Coordination:

The Office of the General Counsel has reviewed this paper and has no legal objection.


James M. Taylor
Executive Director
for Operations

Attachments:

1. Federal Register Notice
2. Congressional Letters

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Wednesday, November 30, 1994.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, November 22, 1994, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION:

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AD10

Acceptance of Products Purchased for Use in Nuclear
Power Plant Structures, Systems, and Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing an advance notice of proposed rulemaking (ANPR) concerning the procurement and dedication of commercial grade items. The ANPR sought comment on the need for additional regulatory requirements and for obtaining an improved understanding of alternatives to regulatory requirements. On the basis of its findings, the NRC staff recommended to the Commission that this ANPR be withdrawn. The Commission has approved the withdrawal of this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gregory Cwalina, Office of Nuclear Reactor Regulation, Division of Technical Support, Special Inspection Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 504-2961.

SUPPLEMENTARY INFORMATION: On March 6, 1989, the staff published in the Federal Register (54 FR 9229) an advance notice

of proposed rulemaking (ANPR), on the need for regulatory actions to effect improvements for procurement, receipt inspection and testing, and dedication programs, in response to the findings of 13 inspections performed on licensees from 1986 through 1989. In the ANPR, the staff explained that it was considering the need for additional regulatory requirements and needed to obtain an improved understanding of alternatives to regulatory requirements.

The inspections on commercial grade dedication programs identified major programmatic deficiencies. On February 21, 1990, the staff submitted SECY-90-057, "Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems, and Components," to summarize its analysis of the public comments on the ANPR and its actions regarding the proposed rulemaking. The staff concluded that (1) more regulatory guidance and direction may be necessary to ensure that the basic requirements for procurement and dedication are clearly stated and understood, (2) the NRC may not need to perform the rulemaking if the industry properly implemented the initiatives it had begun, and (3) the staff would monitor the industry's efforts to determine if the progress made warranted deferring the rulemaking.

On March 7, 1990, the NRC staff forwarded to the Commission SECY-90-076, "Inspection and Enforcement Initiatives for Commercial-Grade Procurement and Dedication Programs," in which the staff described its actions to defer programmatic inspections of licensees' procurement and dedication programs for about one

year while monitoring the industry's developments, improvements, and initiatives in this area.

On August 24, 1990, the NRC staff forwarded to the Commission SECY-90-304, "Nuclear Management and Resources Council (NUMARC) Initiatives on Procurement," in which the staff reported the status of NUMARC's initiatives on general procurement practices. The staff stated it would conduct assessments at selected sites to review the licensees' implementation of improved procurement and commercial grade dedication programs and to assess improvements made in the areas covered by the NUMARC initiatives. The staff began the first of eight planned assessments on February 4, 1991.

On April 9, 1991, the staff issued Generic Letter 91-05, "Licensee Commercial-Grade Procurement and Dedication Programs," in which the staff expressed NRC positions regarding certain aspects of licensee procurement and dedication programs and discussed a number of deficiencies in licensees' commercial grade dedication programs noted during previous team inspections.

On September 16, 1991, the NRC staff forwarded to the Commission SECY-91-291, "Status of NRC's Procurement Assessments and Resumption of Programmatic Inspection Activity," in which the staff reported on the findings of its assessments from February 1991 through July 1991. The staff concluded that although improvements had been made in licensees' procurement and dedication programs, weaknesses in implementation still existed.

The staff began developing an inspection procedure (IP) and

conducted five pilot inspections between December 1991 and June 1992. The staff continued to identify weaknesses in the implementation of licensees' dedication programs. Because of the findings of these inspections, the staff held numerous meetings with NUMARC, industry, and licensees from November 1992 to March 1993. After the pilot inspections were completed, the IP was revised and in March 1993, the staff submitted the draft IP for public comment.

Weaknesses identified during the procurement assessments and pilot inspections were related to implementation of the programs (i.e., dedication of specific items), and not to the programs themselves. Adoption of the industry guidance has, for the most part, resulted in licensees having acceptable programs for the dedication of commercial grade items. These programs also adequately assure that counterfeit, substandard or fraudulently marketed materials will not be accepted for use. The staff's assessment and inspection activities did not identify any instances of counterfeit or fraudulent material being accepted for use by any of the plants examined.

In April 1993, the NRC staff held a public workshop, at which the draft IP and various dedication issues were discussed. The public comment period ended in May 1993, and in June 1993, the comment analysis and the revisions to the IP and dedication guidance were finished. On November 8, 1993, the NRC staff issued the IP. Recent experience with the new IP demonstrated that the current inspection approach provides an effective means

for assuring that licensee procurement and dedication activities will prevent the acceptance of counterfeit and fraudulent materials.

On the basis of the findings of the original inspections, assessments, and pilot inspections, the staff believes that problems identified with respect to the quality of items dedicated for use in safety-related applications are adequately addressed by the requirements of Appendix B and, for the most part, are problems of compliance, rather than of inadequate rules.

Further, as discussed above, the NRC staff and industry worked closely together to improve industry efforts in procurement and commercial grade dedication. Therefore, there appears to be no need for new regulations addressed to the quality of items dedicated for use in safety-related applications.

Part of the staff's reason for originally proposing rulemaking was to reduce the likelihood of counterfeit or fraudulently marketed products from being accepted for use. The staff has issued numerous information notices regarding specific cases of fraudulent parts being found in nuclear facilities and guidance on how to detect them. The staff has also issued two generic letters presenting information regarding procurement program improvements to help prevent the acceptance and use of counterfeit or fraudulently marketed products. This issue is also addressed as part of the NUMARC Comprehensive Procurement

Initiative.

Finally, the Commission issued a rule change to 10 CFR Part 50 (§ 50.5, Deliberate misconduct) that gives the staff an additional regulatory tool to pursue cases in which a licensee contractor or subcontractor has deliberately provided material, goods, or services that causes or may cause the licensee to be in violation of a rule. A supplier providing counterfeit and/or substandard materials to be used in safety-related applications is subject to that rule. Therefore, additional rulemaking to specifically address fraudulent parts appears unnecessary.

For these reasons, the Commission has concluded that the nuclear industry has made significant progress toward improving its procurement and commercial grade dedication programs and believes that problems identified with respect to the quality of items dedicated for use in safety-related applications are adequately addressed by the requirements of 10 CFR Part 50, Appendix B. Therefore, there appears to be no need for new regulations addressed to the quality of items dedicated for use in safety-related applications. Accordingly, the Commission is withdrawing the ANPR.

Dated at Rockville, Maryland, this ___ day of _____, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle
Acting Secretary of the Commission.



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

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Nuclear Regulatory Commission has sent to the Federal Register for publication the enclosed, "Withdrawal of Advance Notice of Proposed Rulemaking (ANPR), 'Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems, and Components'." The NRC is formally withdrawing its ANPR. Specifically, this action removes the ANPR that was published in the Federal Register on March 6, 1989 (54 FR 9229).

This action is effective upon publication in the Federal Register.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Michael Bilirakis



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

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Barbara Vucanovich



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

The Honorable Joseph I. Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Alan K. Simpson