

RULEMAKING ISSUE
(Notation Vote)

May 19, 2015

SECY-15-0074

FOR: The Commissioners

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: DISCONTINUATION OF RULEMAKING ACTIVITY – TITLE 10 OF THE CODE OF FEDERAL REGULATIONS PART 26, SUBPART I, QUALITY CONTROL AND QUALITY VERIFICATION PERSONNEL IN FITNESS FOR DUTY PROGRAM (RIN 3150-AF12)

PURPOSE:

To obtain Commission approval to discontinue a rulemaking activity that would require work hour controls for nuclear power plant personnel who perform independent quality control and quality verification (QC/QV) activities after certain maintenance activities.

BACKGROUND:

On March 31, 2008 (73 FR 16966), the U.S. Nuclear Regulatory Commission (NRC) issued a final rule that substantially revised its regulations for fitness for duty programs in Part 26 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Fitness for Duty Programs." The 2008 final rule established, in part, Subpart I, "Managing Fatigue," that requires nuclear power plant licensees to ensure that worker fatigue does not adversely affect public health and safety and the common defense and security. Part 26 requires licensees to manage worker fatigue at reactors that are operating or under construction (no later than the receipt of special nuclear material in the form of fuel assemblies), for all personnel who are granted unescorted access to protected areas of the plant. The regulations also require licensees to control the work hours of a subset of personnel whose work activities have the greatest potential to adversely affect public health and safety or the common defense and security if their performance is degraded by fatigue (e.g., licensed operators, maintenance technicians, security officers).

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The Commission issued a staff requirements memorandum (SRM) SECY-06-0244, "Final Rulemaking—10 CFR Part 26—Fitness-For-Duty Programs," dated April 17, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML071070361), when it approved publication of the 2008 rule. That SRM provided the following direction to the NRC staff:

The staff should ensure that personnel who actually perform independent quality control/verification (QC/QV) checks under the licensee's NRC-approved Quality Assurance Program are subject to the same Subpart I provisions as operating personnel defined in category § 26.4(a)(1). If staff and [the Office of the General Counsel] determine that this provision of the rule requires re-notice and comment under the [Administrative Procedure Act], staff should issue the final rule without this provision. In that case, staff should separately initiate the additional appropriate noticing for this provision.

Because the NRC staff determined that following the SRM direction would require re-noticing of the rule to provide a new opportunity for public comment, the NRC issued the final rule without imposing work hour controls on individuals performing QC/QV activities.¹ As directed in the SRM, the staff initiated a new proposed rulemaking to apply the work hour controls for operating personnel to the QC/QV-dedicated personnel.²

To support the development of the regulatory basis for the QC/QV proposed rulemaking, the staff requested stakeholder input on the current job functions of plant staff who conduct QC/QV activities. The staff's analysis of that data indicated that QC/QV activities are more similar to maintenance than operations activities. Therefore, in SECY-09-0183, "Proposed Modification for Including Quality Control and Quality Verification Personnel within the Scope of Subpart I of 10 CFR Part 26," dated December 15, 2009 (ADAMS Accession No. ML092810184), the staff requested Commission approval for a modification to SRM SECY-06-0244 to include QC/QV-dedicated personnel under the Subpart I provisions for individuals who perform maintenance activities. The Commission approved the staff's request in SRM SECY-09-0183, dated June 1, 2010 (ADAMS Accession No. ML101520654). On September 10, 2012 (77 FR 55429), the NRC published the regulatory basis and preliminary proposed rule language. A public comment period was not initiated because the documents were made available to provide preparatory material for discussion in future public meetings.

The staff held multiple public meetings from December 2011 through February 2014 to discuss the QC/QV proposed rulemaking and other potential changes to Subpart I. The meetings were attended by members of the nuclear power reactor community, organized labor, contractors, and the media. Summaries of these meetings, including public feedback, are publicly available

¹ QC/QV activities are a part of the planned and systematic actions under a licensee's quality assurance program that are necessary to provide adequate assurance that a safety-related structure, system, and component will perform satisfactorily in service. QC/QV inspections are a subset of QC/QV activities.

² "QC/QV-dedicated personnel" means individuals who perform QC/QV activities and are not otherwise subject to the work hour controls in Subpart I.

at <http://www.regulations.gov> under Docket ID NRC-2009-009. A description of related staff activities on Subpart I is provided in the enclosure to this paper.

The QC/QV proposed rulemaking was also to have considered three petitions for rulemaking (PRMs) that request changes to the 10 CFR Part 26 fatigue management provisions: PRM-26-3,³ PRM-26-5,⁴ and PRM-26-6.⁵ On May 16, 2011 (76 FR 28191–28193), the NRC published three notices in the *Federal Register* (one for each PRM) informing the public that the issues raised in each PRM would be considered in the QC/QV proposed rulemaking.

DISCUSSION:

Appendix B, “Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,” to 10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities,” establishes, in part, quality assurance requirements for all activities affecting the functions of structures, systems, and components (SSCs) that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. Licensees identify the SSCs covered by the quality assurance program (QAP) and the organizations that are the primary participants in the program. Under Appendix B, QAPs consider the need for QC/QV inspections. The QC/QV inspections are performed by qualified individuals who did not perform the work being inspected.

Since the publication of Criterion X, “Inspection” of Appendix B to 10 CFR Part 26 (35 FR 10499; June 27, 1970), some licensees have changed their quality assurance organizational structures. Quality assurance departments are standalone organizations that were initially responsible for quality verifications and quality checks as a part of overall quality assurance. Over time, most licensees shifted the bulk of QC/QV activities to the maintenance department through peer checks. This change reduced the number of personnel in the quality assurance departments who perform QC/QV activities but do not perform maintenance functions that would require them to be subject to the work hour controls in Subpart I. Peer checks performed by individuals in the maintenance departments are now prevalent throughout the industry. Though some sites still rely mainly on the quality assurance departments for these QC/QV activities, this is not a common practice.

³ PRM-26-3 was submitted by Robert Meyer, on behalf of the Professional Reactor Operator Society, and requested that the NRC change the term “unit outage” to “site outage” in Part 26 and that the definition of “site outage” read “up to one week prior to disconnecting the reactor unit from the grid and up to 75-percent turbine power following reconnection to the grid.”

⁴ PRM-26-5 was submitted by Anthony R. Pietrangelo, on behalf of the Nuclear Energy Institute, and requested that the NRC amend its regulations regarding its fitness-for-duty programs to refine existing requirements based on experience gained since the regulations were amended in 2008.

⁵ PRM-26-6 was submitted by Eric Erb and 91 co-signers and requested that the NRC amend its regulations to decrease the minimum days off requirement from an average of 3 days per week to 2.5 or 2 days per week for security officers working 12 hour shifts.

The staff's information-gathering activities during the development of the regulatory basis for the QC/QV proposed rulemaking identified that QC/QV inspections are most often performed by individuals who also perform maintenance activities (i.e., the hybrid approach) and, therefore, are already subject to the work hour controls in Subpart I. The staff found that, industrywide, there are only approximately 170 individuals who perform QC/QV activities who are not otherwise subject to the work hour controls in Subpart I (i.e., QC/QV-dedicated personnel) because they do not perform maintenance of structure, system or components that a risk-informed evaluation process has shown to be significant to public health and safety.

Based, in part, on the information gathered from stakeholders during the development of the regulatory basis, the staff determined that there were 6 sites that use QC/QV-dedicated personnel to perform QC/QV inspections, and 49 sites that use a hybrid approach to QC/QV inspections. At these 49 sites, some QC/QV inspections are performed by maintenance staff and some are performed by QC/QV-dedicated personnel. The remaining sites use only maintenance staff to perform QC/QV inspections. Specifically, at the 6 sites that employ QC/QV-dedicated personnel, there are approximately 12 such individuals per site, while at the 49 hybrid sites, there are approximately 2 such individuals per site performing these QC/QV inspections.

The QC/QV proposed rulemaking to revise Subpart I to require work hour controls for QC/QV-dedicated personnel is subject to the backfitting regulations at 10 CFR 50.109, "Backfitting." The staff performed the initial screening of the QC/QV proposed rulemaking provision against the backfitting requirements. The initial screening showed that the proposed provision would not result in a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from backfitting the Subpart I work hour controls to the QC/QV-dedicated personnel. Therefore, as the QC/QV proposed rulemaking provision cannot satisfy the criteria of the backfit analysis, the NRC staff recommends discontinuing the QC/QV proposed rulemaking.

COMMITMENTS:

If the recommendation to discontinue the QC/QV proposed rulemaking is approved, the staff will perform the following actions:

1. Publish a notice of withdrawal of the regulatory basis and preliminary proposed rule language in the *Federal Register* to inform the public that the agency is no longer pursuing this rulemaking activity.
2. Remove the rulemaking entry (RIN 3150-AF12) from the Unified Agenda after publication of the notice withdrawing the regulatory basis and preliminary proposed rule language.
3. Address the three PRMs in a separate action.

RECOMMENDATIONS:

The NRC staff recommends that the Commission:

1. Approve the discontinuation of the QC/QV proposed rulemaking.
2. Delegate the signature authority to the Executive Director for Operations for the *Federal Register* notice withdrawing the regulatory basis and preliminary proposed rule language.

COORDINATION:

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

/RA/

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Enclosure:
Related Staff Activities
on 10 CFR Part 26, Subpart