



POLICY ISSUE **(Notation Vote)**

January 10, 2018

SECY-18-0003

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: DISCONTINUATION OF RULEMAKING ACTIVITY AND DENIAL OF
PETITION FOR RULEMAKING - REQUIREMENT TO SUBMIT COMPLETE
AND ACCURATE INFORMATION (DOCKET NO. PRM-50-107;
NRC-2013-0077)

PURPOSE:

This paper requests Commission approval to discontinue a rulemaking activity, "Requirement to Submit Complete and Accurate Information"; to deny an associated petition for rulemaking (PRM), PRM-50-107; and to publish the enclosed *Federal Register* notice to inform the public of these decisions. The "Requirement to Submit Complete and Accurate Information" rulemaking would require non-licensees (including vendors and other contractors) that seek regulatory approvals from the U.S. Nuclear Regulatory Commission (NRC) to meet the same requirements for complete and accurate submissions as NRC licensees and license applicants.

BACKGROUND:

On April 15, 2013, the NRC received a PRM from Mr. James Lieberman requesting that the NRC revise its regulations relating to nuclear reactors under Sections 50.1, 50.9, 52.0, and 52.6 of Title 10 of the *Code of Federal Regulations* (10 CFR). The petition sought to expand NRC's regulatory framework to "make it a legal obligation for those non-licensees who seek NRC regulatory approvals be held to the same legal standards for the submittal of complete and

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accurate information as would a licensee or an applicant for a license" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13113A443). The PRM was published in the *Federal Register* for public comment on June 10, 2013 (78 FR 34604). On September 16, 2013 (ADAMS Accession No. ML13261A190), the petitioner amended the PRM to expand its scope to include the regulatory framework for radioactive materials, waste disposal, transportation, and spent fuel storage (10 CFR Parts 30, 40, 60, 61, 63, 70, 71, and 72). Further, in the amended PRM, the petitioner also requested that any person seeking or obtaining NRC approval for a regulated activity be subject to enforcement action for violation of the completeness and accuracy provision of that part. The amended petition was published in the *Federal Register* for public comment on January 21, 2014 (79 FR 3328). On March 17, 2015 (80 FR 13794), the NRC informed the public in the *Federal Register* that the issues raised in the amended PRM have merit and are appropriate for consideration in the rulemaking process.

The concern raised by the petitioner is that non-licensees who request NRC regulatory approvals (e.g., approval of a topical report, an exemption from a specific requirement, or a quality assurance program description) currently do not carry the same regulatory obligation as licensees or license applicants to provide complete and accurate information. In the case of reactor topical reports, as cited by the petitioner, a single report may be adopted by many licensees once the NRC has approved it, thereby propagating and greatly magnifying the impact of any inaccuracies or incompleteness in the original non-licensee's topical report.

DISCUSSION:

The petition raised an issue of technical merit; accordingly, the NRC staff determined that the matter was appropriate for consideration in the rulemaking process. However, the timing for conducting a rulemaking on any issue is dependent on the immediacy of the safety, environmental, or security concerns that have been raised; the rule's priority compared to other rulemakings; and the availability of funding. Using the NRC's Common Prioritization of Rulemaking (CPR) methodology, the staff prioritized this rulemaking activity as low priority. The petitioner's February 3, 2017, letter (ADAMS Accession No. ML17034A409) identified that this rulemaking had been assigned a medium priority; however, the staff has confirmed that references to this rulemaking as medium priority in certain locations were errors, and that it was prioritized as low priority using the CPR methodology.

The staff has not identified any immediate safety, environmental, or security concerns, and the petitioner did not demonstrate how a lack of requirements in this area would contribute to such concerns. In contrast to the repeated past performance problems with non-licensed spent fuel storage cask certificate holders that were addressed in a final rule, "Expand Applicability of Part 72 to Holders of, and Applicants for, Certificates of Compliance" (64 FR 56114; October 15, 1999), the NRC identified only one other example where a non-licensee submitted incomplete or inaccurate information that resulted in a significant safety issue. That instance involved the submission of a reactor topical report on a fire retardant product that was based on falsified test data. While the case took several years to conclude, the NRC was able to exercise its current authority under the Atomic Energy Act (AEA) to resolve the safety issue and ultimately sanction the vendor. In addition, given the NRC's limited annual budget and the queue of higher-priority rulemakings, the staff does not expect to be able to fund such a rulemaking in the foreseeable future.

The AEA stipulates that licensees or applicants are ultimately responsible for safety. The AEA includes the authority to revoke licenses for material false statements (AEA Section 186) and to

require written statements from applicants for licenses and licensees (AEA section 182). As described in the 1987 promulgation of 10 CFR 50.9 (52 FR 49372), this rule codifies in a more explicit and accessible way requirements already existing under the authority of the AEA. The responsibility for safety remains with the licensee or applicant for a license that relies on material provided by a non-licensee. Furthermore, the requirements in 10 CFR Part 21, "Reporting of Defects and Noncompliance," apply to subjects such as safety-related analysis associated with component hardware, which may be addressed in the type of topical report referenced by the petitioner. The NRC, as well as licensees and applicants, have procedures in place to ensure that substantial safety hazards identified under 10 CFR Part 21 are identified and corrected. Based on these considerations, the staff has concluded rulemaking would likely have minimal practical benefit to the safety or security of NRC-regulated activities. In addition, given the low priority of this rulemaking consistent with the CPR, the staff does not expect to be able to fund such a rulemaking for the foreseeable future.

Based on the foregoing considerations, the staff recommends discontinuing this rulemaking. In approving discontinuation, the Commission would be making the policy decision to deny the PRM. Discontinuing the rulemaking activity and denying the PRM would not preclude the NRC from addressing the issue of complete and accurate information in a future rulemaking if new information reveals a safety or security concern.

Public Comments

The NRC received three comment submissions on PRM 50-107 from two individuals. One comment submission requested that the NRC consider additional parts of 10 CFR in the scope of the potential rulemaking. The other comment submissions expressed support for the petition. The public comments did not provide additional information that would alter the staff's determination that the rulemaking would have a low safety or security benefit.

RECOMMENDATION:

The NRC staff recommends that the Commission approve the following:

1. discontinuation of the "Requirement to Submit Complete and Accurate Information" rulemaking;
2. denial of PRM-50-107; and
3. publication of the enclosed *Federal Register* notice informing the public that the NRC is discontinuing the rulemaking activity and denying the PRM.

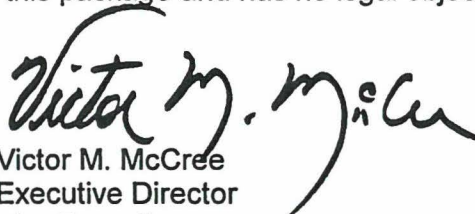
Upon Commission approval, the staff will inform the appropriate Congressional committees of these actions and ensure orderly closure of the rulemaking activity in the NRC's portion of the Unified Agenda of Regulatory and Deregulatory Actions.

RESOURCES:

No additional resources are required to implement the recommendations.

COORDINATION:

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



Victor M. McCree
Executive Director
for Operations

Enclosures:

1. Draft *Federal Register* notice
2. Draft letter to the Petitioner

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FOR RULEMAKING - REQUIREMENT TO SUBMIT COMPLETE AND ACCURATE
INFORMATION (DOCKET NO. PRM-50-107; NRC-2013-0077)
DATED: JANUARY 10, 2018.

ADAMS Accession Nos.: PKG: ML16277A058; SECY: ML16277A064; FRN: ML16277A154;

* concurrence via email

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