

VALUE/IMPACT STATEMENT

CONCERNING

RESPONSE TO REQUEST TO FORM REVIEW BOARD  
TO REVIEW ALL REGULATIONS PRIOR TO ISSUANCE

JUNE 1979

DOCKET NO. PRM 7-1

U. S. NUCLEAR REGULATORY COMMISSION  
OFFICE OF STANDARDS DEVELOPMENT

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## FOREWORD

This value/impact statement has been prepared by the Nuclear Regulatory Commission's Office of Standards Development in connection with the response to petition for rulemaking PRM 7-1 filed by Walter P. Peeples, Jr., President, Non Destructive Testing Management Association.

The petition requested the Commission to form a review board made up of responsible members of industry to review all pertinent regulations and to clarify positions of industry prior to issuance of all new regulations.

After consideration of the values and impacts of technical and procedural approaches, this statement concludes that the NRC should maintain the status quo and the NRC's Executive Director for Operations should deny petition for rulemaking PRM 7-1 on the grounds that NRC policy and procedures for direct distribution of proposed and effective amendments of NRC regulations to licensees and other interested persons: (1) Fully satisfy the objectives set forth in the petition; and (2) Assure that affected licensees and applicants are aware of all proposed and effective regulations of a substantive nature, without the need to form a review board as requested in the petition.

This statement is available for public inspection at the NRC's Public Document Room at 1717 H Street N.W., Washington, D.C. Single copies may be obtained by writing to:

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### I. The Proposed Action

- A. Description - The proposed action is to maintain the status quo with respect to NRC policies and procedures designed to provide assurance that affected licensees and applicants are aware of all proposed and effective regulations of a substantive nature.
- B. Need for the Proposed Action - Throughout its regulatory history, the NRC (and its predecessor, the Atomic Energy Commission) has carried out its statutory responsibility to regulate civilian nuclear activities so that the public health and safety, national security, and environmental quality are protected, and the antitrust laws are obeyed.

Changes in NRC licensing requirements have frequently been cited as a cause of additional costs in the licensing process. While many of these changes involve significant safety matters, and as such are viewed as a justifiable part of licensing requirements, the NRC staff has been making increasing use of value/impact assessments by which to ensure that the expectation of benefit of a new requirement justifies its probable cost in time, money, and effort. The value/impact assessments accompany changes through the rulemaking process.

The NRC's rulemaking process has several procedures, including publication of proposed and effective amendments in the Federal Register, for aggressively seeking public comments. Despite publication in the Federal Register and other efforts to invite comments from interested persons, some licensees have not become aware of a regulation until long after it is in effect or the comment period has expired.

One result of the lack of awareness is a letter dated July 19, 1978, from Walter P. Peebles, Jr., President, Non Destructive Testing Management Association, petitioning the Commission to form a review board made up of responsible members of industry to review all pertinent regulations and to clarify positions of industry prior to issuance of all new regulations.

In the letter of July 19, 1978, the petitioner stated that within the past few years, it has become obvious that certain regulations are placed upon the industry which are deemed unnecessary. The petitioner noted that the approach (formation of a review board) will serve to educate both the industry and the NRC, and concluded that unnecessary regulations have proved to be costly and time consuming which has interfered with the NRC's effectiveness.

By memorandum dated November 20, 1978 (Attachment 1), the Executive Director for Operations established a new policy and provided NRC-wide procedures for direct distribution of all substantive proposed and effective amendments of NRC regulations to affected licensees and other interested persons.

The totality of NRC policies and procedures for seeking public comment provides assurance that affected licensees and applicants are aware of all proposed and effective regulations of a substantive nature, without the need to form a review board as requested in the petition.

C. Value/Impact of the Proposed Action

1. NRC Operations - The proposed action is expected to take about 0.1 man-year of the SD Task Leader's time and about the same manpower requirement for other NRC offices in support of the proposed action.

The proposed action can be accommodated without significant impact for ongoing staff work. No technical assistance contract or research support will be needed for the proposed action.

The NRC will have to pay about \$200 under billing code 7590-01 for publication of a notice of denial of petition for rulemaking in the Federal Register. Additional costs and effort will be incurred from publication of the denial of petition for rulemaking in Nuclear Regulatory Commission Issuances. These costs were committed when the Peebles letter of July 19, 1978, was docketed as petition for rulemaking PRM 7-1.

2. Other Government Agencies - No Federal, State, or local agency is expected to provide assistance. Publication of the notice of denial of petition for rulemaking will be cost reimbursable, as indicated above, for the Office of the Federal Register.
3. Industry - The proposed action will have no impact on operating facilities or employment and labor interests. NRC procedures provide ample opportunity for all interested persons, including industry, to comment publicly on proposed and effective regulations. They can give NRC their views on the values, impacts, administrative burdens, costs, and other aspects of proposed regulations.

As a matter of practice, the notice of denial of PRM 7-1 will be mailed to NRC specific licensees on the chance that some of them may not be aware of the NRC's procedures for direct distribution.

4. Public - The proposed action should result in no net change in costs to the public. The NRC will continue to provide ample opportunity to the public to comment on proposed and effective regulations.

To provide for wider public awareness of NRC's policy for direct distribution of proposed and effective regulations to affected licensees and other interested persons, a public announcement should be issued for use by newspapers, trade journals, and other publications.

- D. Decision on the Proposed Action - The proposed action, which is continuation of present NRC policies and procedures for aggressively seeking public comment on proposed and effective regulations, should be undertaken. As indicated above, a related public announcement should be issued to provide for wider public awareness of the NRC policy of direct distribution of proposed and effective regulations.

## II. Technical Approach

- A. Technical Alternatives - There are two alternatives for providing assurance that affected licensees and applicants are aware of all proposed and effective regulations of a substantive nature:
  1. Continue present NRC policies and procedures and form a review board as requested in the petition; or
  2. Maintain the status quo without forming a review board as requested in the petition.
- B. Discussion and Comparison of Technical Alternatives
  1. One approach would be to continue present NRC policies and procedures and, in addition, grant the petitioner's request to form a review board made up of responsible members of industry to review all pertinent regulations and to clarify positions of the industry prior to issuance of all new regulations.

The review board could be established under the provisions of 10 CFR Part 7, "Advisory Committees."

Advisory Committees are subject to the requirement of 10 CFR 7.6(b)(2) that the membership be fairly balanced in terms of the points of view represented and the functions to be performed by the review board. The petitioner requested the Commission to form a review board made up of responsible members of industry. To achieve a fairly balanced membership would require appointment of labor, management, public, and other interest groups to the extent that the membership would be large and unwieldy.

Under 10 CFR 7.14, the Commission conducts an annual comprehensive review of each advisory committee. Pertinent factors include whether the information or recommendations could be obtained from sources within the Commission and the degree of duplication of effort by the review board as compared to other parts of the NRC. Ample opportunity is provided to all interested persons, industry, to submit to the NRC their views on the values, impacts, administrative burdens, costs, and other aspects of proposed regulations. All persons who submit substantive comments on a proposed regulation can identify their comments and the NRC staff responses to their comments in the comment analysis prepared in connection with the effective regulation.

In these respects, review and comment on all pertinent regulations by a review board most likely would duplicate reviews and comments by other interested persons. Under NRC procedures for direct distribution, all substantive proposed and effective regulations are mailed to affected licensees and other known interested persons. "Interested persons" includes, for example, trade associations and trade publications likely to be read by the membership of a review board.

From the viewpoint of duplication of effort, all manpower and money expended in establishing and maintaining a review board would be an impact without commensurate value of different or unique substantive comments on proposed or effective regulations.

Perhaps the most telling problem with a review board would be the real or apparent potential conflicts of interest where members of the review board (as special Government employees, 10 CFR 0.735-4(e)) may have direct or indirect financial interests that conflict with their Government duties and responsibilities. It appears likely that members of the review board could, in some cases, render advice the outcome of which could have a direct and predictable effect upon their financial interests. This would be a direct result of the petition's objective to maintain liaison with the Commission and to indicate to the

Commission what is considered necessary and unnecessary in relation to regulations. Federal Personnel Manual Chapter 735, Appendix C, and NRC's regulation 10 CFR Part 0 provide that an advisor should in general be disqualified from participating as a special Government employee in a matter raising a reasonable question of conflict of interest. (This does not preclude any interested person from participating in rulemaking through the submission of statements, information, opinions, and arguments in the manner stated in notices of proposed rulemaking).

2. The other approach would be to continue present NRC policies and procedures without forming a review board as requested in the petition.

Under this approach, the Commission could deny the request to form a review board and notify the petitioner with a simple statement of the grounds of denial. This alternative would maintain the status quo, i.e., NRC policy and procedures would continue to provide for direct distribution of proposed and effective amendments of NRC regulations to affected licensees and other interested persons.

The policy of direct distribution commits money, manpower, and other resources to meet the objectives of the policy.

Under direct distribution procedures, the task leader responsible for the development of a regulation is responsible for designating the addressees to whom the rule will be mailed and coordinating the mailing of the rule. This assures that affected licensees are aware of all proposed and effective regulations of a substantive nature, without the need to form a review board as requested.

The direct distribution of substantive proposed regulations to affected licensees and other known interested persons supplements and does not take the place of public rulemaking procedures. Notice and publication in the Federal Register with specific invitation for written comments or suggestions in connection with proposed regulations is still necessary. All comments received in response to notices published in the Federal Register, reproduced in journals or newsletters, or directly distributed are docketed, acknowledged, and considered in developing effective regulations.

- C. Decision on Technical Approach - Based on these considerations, the recommended technical approach is continuation of present NRC policies and procedures for seeking public comment on proposed and effective amendments of NRC regulations without forming a review board as requested in the petition.

### III. Procedural Approach

- A. Procedural Alternatives - Under 10 CFR 2.803, "Determination of Petition," the Commission may deny a petition and notify the petitioner with a simple statement of the grounds of denial. Further, 10 CFR 2.4(e) provides the alternatives by which a petition may be denied: 1. The Commissioners sitting as a body, as provided by sec. 201 of the Energy Reorganization Act of 1974, or 2. The Executive Director for Operations who has been delegated authority under sec. 161n of the Atomic Energy Act of 1974, as amended.
- B. Value/Impact of Procedural Alternatives - For denial of the petition by the Commissioners sitting as a body, the NRC staff would prepare a Commission paper for the Commissioners' approval of the Federal Register notice of denial and the letter of denial to the petitioner that would be signed by the Secretary of the Commission.

For denial of the petition by the Executive Director for Operations, the NRC staff would prepare a memorandum for the EDO's signature on the Federal Register notice of denial and the letter of denial to the petitioner.

The principal difference between the procedural approaches is the additional time and effort needed to circulate a Commission paper and to obtain a record vote of the Commissioners' approval.

- C. Decision on Procedural Approach - Under 10 CFR 1.40(o), the Executive Director for Operations has been delegated authority to deny petitions for rulemaking of a minor or non-policy nature, where the grounds for denial do not substantially modify existing precedent. The denial of PRM 7-1 is in this category.

Based on these and other considerations set out above, the recommended procedural approach is denial of the petition by the Executive Director for Operations.

### IV. Statutory Considerations

- A. NRC Authority - The formation of a review board is covered by 10 CFR Part 7, "Advisory Committees," the Federal Advisory Committee Act (Pub. Law 92-463, 86 Stat. 770), Executive Order 11769 (39 FR 7125), and Office of Management and Budget Circular No. A-63. The denial of PRM 7-1 will be issued by the Executive Director for Operations under authority delegated in 10 CFR 1.40(o).
- B. Need for NEPA Statement - The denial of the request to form a review board to review pertinent regulations is not a major Federal action significantly affecting the quality of the human environment. Accordingly, an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared.

- V. Relationship to Other Existing or Proposed Regulations or Policies -The relationship to 10 CFR Parts 1 and 7 has already been discussed. Rulemaking proceedings, including denials of petitions for rulemaking, are conducted under 10 CFR Part 2, Subpart H. The grounds of denial are based on NRC policy and procedures for direct distribution of proposed and effective regulations, as already discussed.
- VI. Summary and Conclusions - After consideration of the values and impacts of technical and procedural approaches, this statement concludes that the NRC should maintain the status quo and the NRC's Executive Director for Operations should deny petition for rulemaking PRM 7-1 on the grounds that NRC policy and procedures for direct distribution of proposed and effective amendments of NRC regulations to licensees and other interested persons: (1) Fully satisfy the objectives set forth in the petition; and (2) Assure that affected licensees and applicants are aware of all proposed and effective regulations of a substantive nature, without the need to form a review board as requested in the petition.

#### References

1. Atomic Energy Act of 1954, as amended, Public Law 83-703. Available from Government Printing Office.
2. Letter from Walter P. Peebles, Jr., President, NDTMA, to S. Chilk, NRC, dated July 19, 1978. Available in NRC PDR for inspection and copying for a fee.
3. Title 10, Code of Federal Regulations, Parts 0 to 199. Available from Government Printing Office.
4. Energy Reorganization Act of 1974, as amended, Public Law 93-438. Available from Government Printing Office.
5. Federal Advisory Committee Act, Public Law 92-463. Available from Government Printing Office.
6. Executive Order 11769, 39 FR 7125 (1974). Available in public libraries.
7. Office of Management and Budget Circular No. A-63. Available from Government Printing Office.
8. National Environmental Policy Act of 1969, Public Law 91-190. Available from Government Printing Office.