



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

RBE PDR A

NOV 21 1978

Docket No. 50-382

Mr. D. L. Aswell
Vice President, Power Production
Louisiana Power & Light Company
142 Delaronde Street
New Orleans, Louisiana 70174

Dear Mr. Aswell:

SUBJECT: REQUEST FOR EXEMPTION FROM CERTAIN REQUIREMENTS OF 10 CFR PART 21

In my September 19, 1978 letter to you concerning your July 28, 1978 request for exemption, I indicated that we were deferring action on your request until the Commission acted on pending recommendations regarding amendments to 10 CFR Part 21.

On October 19, 1978 the Commission issued an amendment to Part 21 that might eliminate the need for an exemption to the regulation for the situation you described in your letter. You should reexamine your request in light of the amendment to Part 21, a copy of which is enclosed, and determine if you still believe an exemption is required. In the meantime, we will not process further your present request for an exemption.

Sincerely,

A handwritten signature in cursive script that reads "Harold R. Denton".

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

Enclosure:
10 CFR Part 21 Amendment

cc w/enclosure:
See next page

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Mr. D. L. Aswell

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10/21/1978

cc: W. Malcolm Stevenson, Esq.
Monroe & Lemann
1424 Whitney Building
New Orleans, Louisiana 70130

Mr. E. Blake
Shaw, Pittman, Potts and Trowbridge
1800 M Street, N. W.
Washington, D. C. 20036

Mr. D. B. Lester
Production Engineer
Louisiana Power & Light Company
142 Delaronde Street
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[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

Amendments Regarding Basic Component

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to limit the types of items that are within the scope of its rule for reporting defects and noncompliance. This action is believed necessary since the currently effective rule is being applied by organizations within its scope to an extent not contemplated and is causing problems relating to the supplying of equipment. The amendments provide that items that are available in general commerce and which have no unique requirements imposed for nuclear application will not be within the scope of the revised rule for reporting defects and noncompliance. These amendments will alleviate the above problem.

DATE: These amendments will be effective on October 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. W. E. Campbell, Jr., Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-443-5913.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Nuclear Regulatory Commission (hereinafter the "Commission") has decided to amend 10 CFR Part 21, "Reporting of Defects and Noncompliance." Specifically, the Commission has decided to impose limits on the types of items that are used in facilities or activities licensed pursuant to part 30, 40, 50, 70, or 71 that are within the scope of 10 CFR Part 21.

On March 3, 1975, 10 CFR Part 21 was published as a proposed rule (40 FR 5832). On June 8, 1977, 10 CFR Part 21 was published as an effective rule (42 FR 28291) with some portions of the rule to be effective on July 6, 1977, and the remaining portions to be effective on January 6, 1978. On July 7, 1977, a *Federal Register* notice (42 FR 24886) changed the initial effective date to August 10, 1977, vice July 6, 1977. To facilitate implementation of 10 CFR Part 21 a series of public regional meetings were held in July 1977 and based on those meetings the Com-

mission staff in October 1977 published NUREG-0302 Rev. 1, "Remarks Presented (Questions/Answers) Discussed at the Public Regional Meetings To Discuss Regulations (10 CFR Part 21) for Reporting Defects and Noncompliance." NUREG-0302 Rev. 1 contains staff guidance relating to the implementation and enforcement of 10 CFR Part 21 and is available through the National Technical Information Service, Springfield, Va. 22161. In the preamble to the effective rule, the Commission stated that it intended "to examine closely the implementation of 10 CFR Part 21 with a view to making any clarifying or other changes that may be warranted in the light of experience."

Part 21 defines a "basic component" subject to the reporting and other requirements of the rule. In response to inquiries during and subsequent to the public regional meetings relating to "off-the-shelf" or "catalog" items, the staff provided guidance that such items may be within the scope of 10 CFR Part 21 depending on the circumstances at the time of procurement. This guidance has been construed by numerous organizations to mean that the requirements of 10 CFR Part 21 apply to manufacturers and distributors who are involved to any extent in supplying basic components, or parts of basic components, of a facility or activity including supplying base material or functional assemblies to the manufacturer of the "basic component." This meaning has led to the imposition of 10 CFR Part 21 at a procurement stage where there are no design or specification requirements that are unique to application of the item at a nuclear facility or activity, e.g., relays.

The use of this meaning of basic component has not improved the quality of such items and, therefore, has not enhanced safety. Instead it is causing cost increases and inability to obtain needed supplies. To the extent that the purchaser is unable to obtain a needed item from the most qualified supplier and must turn to other less qualified suppliers, defining basic component to include such an item may to some extent detract from safety. To relieve the conditions that are resulting from the above interpretation and to mitigate this potential reduction of safety part 21 is being amended to remove from the scope of 10 CFR Part 21, during specific stages of procurement, those items of a commercial grade, e.g., bearings, relays, and bar stock that are (1) not subject to design or specification requirements unique to facilities or activities licensed by the Commission, (2) used in applications other than facilities or activities licensed by the Commission, and (3) able to be ordered from the manufac-

turer/distributor on the basis of the manufacturer's published specifications. At a defined stage of procurement, when the item is "dedicated" to a "basic component" (see 10 CFR 21.3(c-1)) the item will become subject to the requirements of 10 CFR Part 21.

Prior to these amendments 10 CFR Part 21 included within its scope direct inspections of licensees and suppliers as provided under section 206 of the Energy Reorganization Act of 1974. The revised rule will narrow the scope of the NRC inspection authority based on 10 CFR Part 21. However, NRC will retain the authority to inspect suppliers of commercial grade items provided by subsection 206(d) where reasonably necessary to aid in the identification by the Commission of defects and noncompliance reportable by licensees and suppliers of basic components as provided in 10 CFR Part 21.

Procurement documents that were issued in accordance with 10 CFR 21.31 after August 10, 1977, and invoked 10 CFR Part 21 may be amended to delete reference to 10 CFR Part 21 if the item being procured complies with the definition of a "commercial grade item" (see 10 CFR 21.3(a-1)).

The amended rule will clarify the applicability of 10 CFR Part 21 and thereby allow for precise application of the rule to those items that are subject to design or specification requirements unique to facilities or activities licensed pursuant to part 30, 40, 50, 60, or 71 of 10 CFR Chapter I.

Since the amendments are intended, in part, to respond to a number of requests for exemptions from 10 CFR Part 21 which may be necessary to insure the continued availability of components for the nuclear industry and since the amendments narrow the scope of the regulation thereby relieving a restriction on persons subject to it, but without any significant adverse safety consequences, the Commission has found that good cause exists for omitting notice of proposed rulemaking and public procedure thereon as unnecessary. Accordingly, the amendments are to be effective October 19, 1978.

Public comments on these amendments and on other portions of 10 CFR Part 21 are invited in order to evaluate the need for any further clarifying or other changes to 10 CFR Part 21. Comments that are received prior to December 18, 1978, will be particularly useful in evaluating the need for and content of additional amendments.

1. The final sentence of § 21.2 is amended to read as follows:

§ 21.2 Scope.

* * * Nothing in these regulations should be deemed to preclude either

an individual or a manufacturer/supplier of a commercial grade item (see § 21.3(a-1)) not subject to the regulations in this part from reporting to the Commission a known or suspected defect or failure to comply and, as authorized by law, the identity of anyone so reporting will be withheld from disclosure.

2. A new sentence is added to the end of § 21.3(a) to read as follows:

§ 21.3 [Amended]

(a) * * * A commercial grade item is not a part of a basic component until after dedication (see § 21.3(c-1)).

3. New paragraphs (a-1) and (c-1) are added to § 21.3 to read as follows:

(a-1) "Commercial grade item" means an item that is (1) not subject to design or specification requirements that are unique to facilities or activities licensed pursuant to part 30, 40, 50, 70, or 71 of this chapter and (2) used in applications other than facilities or activities licensed pursuant to part 30, 40, 50, 70, or 71 of this chapter and (3) to be ordered from the manufacturer/supplier on the basis of specifications set forth in the manufacturer's published product description (for example a catalog).

(c-1) "Dedication" of a commercial grade item occurs after receipt when that item is designated for use as a basic component.

4. A new sentence is added to the end of § 21.7.

§ 21.7 Exemptions.

* * * Suppliers of commercial grade items are exempt from the provisions of this part to the extent that they supply commercial grade items.

(Sec. 161, Pub. L. 83-703, 68 Stat. 946; sec. 234, Pub. L. 91-161, 83 Stat. 444; sec. 206, Pub. L. 93-438, 88 Stat. 1246 (42 U.S.C. 2201, 2282, 5846).)

Dated at Washington, D.C., this 13th day of October 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILE, Secretary of the Commission.

[PR Doc. 78-29484 Filed 10-18-78; 8:45 am]

[6714-01-M]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER B—REGULATIONS AND STATEMENTS OF GENERAL POLICY

PART 303—APPLICATIONS, REQUESTS, AND SUBMITTALS

Amendments to Delegations of Authority Respecting Section 19 Applications

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to provide a faster method of processing requests for employment with insured banks. No person is allowed to serve as a director, officer, or employee of an insured bank if he or she has been convicted of a crime involving dishonesty or breach of trust unless FDIC gives its approval. At present, all requests for employment are processed through the FDIC's regional and Washington offices, and are ultimately acted on by FDIC's Board of Directors. Where employment does not constitute a significant threat to the safety and soundness of the bank, the request may be handled faster by the Board of Review (a standing committee of the FDIC) or the Director of FDIC's Division of Bank Supervision and the Regional Director of the Region in which the employer is located.

EFFECTIVE DATE: This amendment is effective November 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Karl J. Seif, Senior Attorney, Federal Deposit Insurance Corporation, Room 4105-P, 550 17th Street NW., Washington, D.C. 20429, 202-389-4422.

SUPPLEMENTARY INFORMATION: Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1819) provides that no person may serve as a director, officer, or employee of an insured bank who has been convicted of a crime involving dishonesty or breach of trust without the written consent of FDIC. Normally consent has been granted by the FDIC's Board of Directors upon application by an insured bank desiring to employ or continue to employ such an individual. In order to expedite the handling of section 19 applications, FDIC's Board of Directors is delegating to the Board of Review, as the case may be, or to the Director, Division of Bank Supervision, or where confirmed in writing by the Di-

rector, Division of Bank Supervision, to the Regional Director of the Region in which the applicant bank is located, the authority to approve section 19 applications. The scope of the delegation goes to applications by all insured banks, since the statute (Section 19 of the Federal Deposit Insurance Act) applies to all insured banks and is not limited to nonmembers. Section 303.11 has been amended to reflect this.

In adopting this amendment to FDIC's regulations, FDIC's Board of Directors did not follow the requirements of section 553(b) of Title 5 of the United States Code and §§ 302.1 and 302.2 of FDIC's regulations with respect to notice and public participation because the amendment relates solely to rules of agency organization, procedure, and practice, and because the Board of Directors found that notice and opportunity for public comment thereon would be unnecessary and would serve no useful public purpose. 12 CFR 303.11 is amended by adding the following paragraph:

§ 303.11 Delegation of authority to act on certain applications.

(e) Applications filed pursuant to section 19 of the Federal Deposit Insurance Act. (1) The Board of Directors of the Federal Deposit Insurance Corporation has delegated to the Corporation's Board of Review the authority on behalf of the Board of Directors to approve applications filed by insured banks with the Corporation pursuant to section 19 of the Federal Deposit Insurance Act seeking the consent of the Corporation for the employment of any director, officer, or employee who has been convicted or is hereafter convicted of any criminal offense involving dishonesty or a breach of trust. Such authority to approve includes any director, and any officer or employee who has authority to participate or may hereafter participate in policymaking functions of such insured bank, or has direct or indirect control of 5 percent or more of the voting rights of any class of voting stock of such insured bank: Provided, That the insured bank's primary supervisory authority interposes no objection to such application. This authority shall extend to the approval but not to the denial of such applications. The delegation of authority to the Board of Review to approve applications under this subparagraph and § 303.11(e)(2) does not preclude the Board of Directors from acting on any application upon which the Board of Review may not wish to act. Any voting member of the Board of Review attending the meeting at which an application is considered may request that the application be referred to the