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RULEMAKING ISSUE

February 27, 1991

(NEGATIVE CONSENT)

SECY-91-055

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: REQUEST TO MODIFY FINAL RULE, "REVISED STANDARDS FOR PROTECTION AGAINST RADIATION," (SECY-90-387) TO MEET PUBLICATION REQUIREMENTS OF THE OFFICE OF THE FEDERAL REGISTER

Purpose: To inform the Commission of intent to change the numerical structure of the final rule revising Part 20 from that previously approved by the Commission to conform to the publication requirements of the Office of the Federal Register (OFR).

Summary: On December 13, 1990, the Commission approved, by a vote of 4-0, a final rule for 10 CFR Part 20 entitled, "Revised Standards for Protection Against Radiation" (SECY-90-387). The Commission directed the staff to make the rule effective 30 days after publication, but allow licensees to defer implementation of this rule until January 1, 1993. Subsequently, the OFR informed the NRC that its approach for implementing this rule is not acceptable because the OFR may not publish two versions of codified text in Part 20 that have the same numerical structure when both versions would be relied on by the NRC for enforcement purposes. Therefore, the staff is planning to publish the revised standards for protection against radiation to be placed in Part 20 immediately following the currently effective regulations, thereby permitting both versions to be included as codified text in 10 CFR. On January 1, 1993, the current regulations in Part 20 will be abolished and the revised standards for radiation protection in Part 20 will remain as the only effective regulations in Part 20.

Discussion: In a Staff Requirements Memorandum dated December 19, 1990, the Commission approved the revised Standards for Protection Against Radiation and directed that the rule become effective 30 days after publication in the Federal Register. The Commission further directed that the rule also permit licensees to defer implementation of this rule until January 1, 1993.

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

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The final rule was modified at §20.8 to permit licensees to defer implementation and was submitted to the OFR on January 29, 1991.

After reviewing the rule for compliance with its publication requirements, the OFR determined that the implementation provision in §20.8 was in violation of the Federal Register Act (44 U.S.C. Chapter 15) if both the current and revised radiation protection standards were to both be effective and published using the same numerical designators in Part 20. The OFR is required by 44 U.S.C. 1510(a) to publish and maintain a complete codification of each agency's regulations that have general applicability and legal effect. This means that the Code of Federal Regulations must include all regulations that may be applied to a general class of persons and that an agency intends to enforce. In addition, the Federal Register Act requires each regulation to be identified by a unique numbering system, thereby prohibiting the publication of two different versions of effective regulations under the same number.

The NRC's approach in implementing the revised Part 20 (that is, making the rule effective 30 days after publication and allowing licensees until January 1, 1993, to implement the revised requirements) is contrary to Section 1510 in two respects.

First, §20.8(a) of the rule specifically states that unless an applicant for a license or a current licensee elects to be regulated against the provisions of the revised Part 20, they would be regulated against the provisions of the existing Part 20. However, because the revised Part 20 was to become effective 30 days after publication, the existing Part 20 would be superseded and could not be included in the Code of Federal Regulations.

Second, even if the existing Part 20 were retained, such an action would violate the basic principle of codification that requires that each provision be identified by a unique number. The NRC would be relying on two separate and distinct versions of 10 CFR Part 20.

Based on the above discussion, I intend to publish the text of the final rule, "Revised Standards for Protection Against Radiation," in Part 20 immediately following the currently effective regulations, thereby permitting both versions to be included as codified text in 10 CFR. Specifically,

- ° the current Part 20 will be retained in its current location in 10 CFR as it currently is codified without a subpart designation;
- ° the new Part 20 text will be inserted immediately following the text of the current Part 20, and will begin with the first section designated §20.1001. The new Part 20 regulations will retain the subpart designators as approved by the Commission; and,
- ° necessary changes will be made to the alphanumeric designators of the appendices to the current version of Part 20 to make it clear that they reference this portion of Part 20.

On January 1, 1993, the standards included in the current version of Part 20 will be removed from 10 CFR and only the revised standards will be in effect and binding on licensees. The numerical structure of the revised standards, beginning with §20.1001, will not be changed and §§20.1-20.1000 will simply be listed as "reserved." This approach, which is acceptable to the OFR, will permit:

- ° the revised standards to become effective 30 days following publication, as directed by the Commission;
- ° implementation of the provision, directed by the Commission, that allows licensees or applicants to request the NRC to regulate them against the revised standards prior to January 1, 1993;
- ° the retention in 10 CFR Part 20 of the current standards for protection against radiation, thereby allowing continued regulation and enforcement of the current requirements until they expire on December 31, 1992.

This change will have no effect on the implementation of the revised standards for protection against radiation with respect to Agreement State licensees. This change will require six weeks to prepare the rule for publication by the Office of the Federal Register.

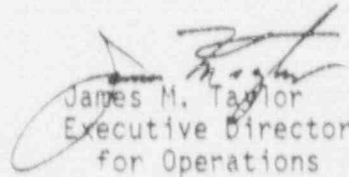
Based on the above, I have determined that these modifications to the final rule approved by the Commission in SECY-90-387 are necessary. The supplementary portion of the Federal Register notice will be modified slightly to explain this action.

On December 1, 1992, I will publish in the Federal Register a minor rule to remove the regulations in Part 20 that were effective on January 1, 1991.

The Office of the General Counsel has no legal objection.

Note:

The staff intends to modify the final rule in SECY-90-387 to permit the inclusion as codified text in 10 CFR of both the revised standards for protection against radiation, as approved by the Commission, as well as the current standards in Part 20. The process to make this modification will begin five days from the date of this paper unless instructed otherwise by the Commission.


James M. Taylor
Executive Director
for Operations

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Wednesday, March 6, 1991, that the Commission, by negative consent, assents to the action proposed in this paper.

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