

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Caputo
SUBJECT: SECY-20-0086: Denial of two Petitions for Rulemaking (PRM-26-3 and PRM-26-5) due to the Discontinuation of Associated Rulemaking

Approved xx Disapproved Abstain Not Participating

COMMENTS: Below xx Attached xx None

I approve the staff's recommendation to deny PRM-26-3 and PRM-26-5 without prejudice. I approve publication of the Federal Register notice and issuance of the letters informing the petitioners of this decision, subject to the attached edits.

Once again, I share the Chairman's concern about the prolonged delay between termination of the associated rulemaking and this paper. The staff should examine its procedures to determine if any actions could prevent similar gaps or lack of tracking.

Entered in STARS

Yes X

No



Signature

10/30/2020

Date

AXC edits

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

[Docket Nos. PRM-26-3; NRC-2009-0482, PRM-26-5; NRC-2010-0304]

Fitness-for-Duty Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Petitions for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying two petitions for rulemaking related to the fitness-for-duty program that were docketed as PRM-26-3, "Professional Reactor Operator Society - Fitness-for-Duty Programs," and PRM-26-5, "Nuclear Energy Institute – Fitness-for-Duty Programs," due to the discontinuation of the associated rulemaking.

DATES: As of **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, the dockets for PRM-26-3 and PRM-26-5 are closed.

ADDRESSES: Please refer to Docket IDs NRC-2009-0482 or NRC-2010-0304 when contacting the NRC about the availability of information regarding this document. You

may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket IDs NRC-2009-0482 or NRC-2010-0304. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Yanely Malave, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1519, e-mail: Yanely.Malave-Velez@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Title 10 of the *Code of Federal Regulations* (10 CFR) 2.802, “Petition for rulemaking—requirements for filing,” provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation in 10 CFR chapter I. The NRC received the following petitions for rulemaking (PRMs) regarding subpart I, “Managing Fatigue,” of 10 CFR part 26, “Fitness for Duty Programs,” subpart I, “Managing Fatigue,” from the Professional Reactor Operator Society (PROS) and the Nuclear Energy Institute (NEI) after the NRC issued a final rule in 2008¹ that substantially revised its fitness for duty requirements:

(1) PRM-26-3 Submitted by Robert N. Meyer on Behalf of PROS

On October 16, 2009, Mr. Robert N. Meyer, on behalf of PROS, an organization of operations personnel employed at nuclear power plants throughout the United States, submitted a PRM requesting that the NRC amend its fatigue management regulations to change the term “unit outage” to “site outage” used in 10 CFR part § 26.205(d)(4) and (d)(5) and that the definition of “site outage” should be provided to read as “up to 1 week prior to disconnecting the reactor unit from the grid and up to 75-percent turbine power following reconnection to the grid” (ADAMS Accession No. ML092960440). The NRC docketed the petition as PRM-26-3, and on November 27, 2009, published a document in the *Federal Register* requesting public comment (74 FR 62257). The comment period closed on February 10, 2010, and the NRC received 4 comment letters. After evaluating the merits of the petition and the public comments, the NRC determined that the issues

¹ “Fitness for Duty Programs; Final Rule,” 73 FR 16966 (March 31, 2008).

raised in PRM-26-3 would be considered in a planned rulemaking activity titled, "Quality Control/Quality Verification" (QC/QV) (Docket ID: NRC-2009-0090) and published a *Federal Register* notice (76 FR 28192) on May 16, 2011 to this effect.

(2) PRM-26-5 Submitted by Anthony R. Pietrangelo on Behalf of NEI

On September 3, 2010, Anthony R. Pietrangelo on behalf of NEI, a nuclear power industry trade association, submitted a PRM requesting that the NRC amend its regulations regarding fatigue management based on experience gained since the regulations were amended in 2008. The NRC docketed the petition as PRM-26-5, and on October 22, 2010, published a document in the *Federal Register* requesting public comment (75 FR 65249). The comment period closed on January 5, 2011, and the NRC received 39 comment letters. After evaluating the merits of the petition and the public comments, the NRC determined that the issues raised in PRM-26-5 would be considered in the planned QC/QV rulemaking and published a *Federal Register* notice (76 FR 28192) on May 16, 2011 to this effect.

II. Discussion

A. Discontinuation of the Quality Control/Quality Verification (QC/QV) Rulemaking

In the May 19, 2015, SECY-15-0074, "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)," (ADAMS Accession No. ML15084A092), the NRC staff requested Commission approval to discontinue the QC/QV rulemaking. This request was based on the following factors: 1) QC/QV inspections are most often performed by maintenance personnel who are

already covered by the work hour controls in 10 CFR part 26, subpart I; 2) the few remaining inspections are performed by a small number of QC/QV-dedicated personnel; and 3) backfitting the 10 CFR part 26, subpart I, work hour controls to the QC/QV-dedicated personnel would not result in a substantial increase in the overall protection of the public health and safety or common defense and security. The Commission approved the discontinuation of this rulemaking effort in SRM-SECY-15-0074, "Staff Requirements – SECY-15-0074 – 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)," dated July 14, 2015 (ADAMS Accession No. ML15195A577).

B. Denial of PRM-26-3 and PRM-26-5

Under § 2.803(i)(2), if after closing the docket for a PRM under § 20803(h)(2)(ii) by addressing it in an ongoing rulemaking the NRC determines not to complete a rulemaking, anythe-associated PRM is documented as a denied. of the PRM. In SRM-SECY-15-0074, the Commission approved the discontinuation of the QC/QV rulemaking, as discussed above, which was the rulemaking identified to address PRM-26-3 and PRM-26-5. Therefore, the NRC is denying these petitions without prejudice.

III. Conclusion

The NRC previously discontinued the QC/QV rulemaking and is therefore denying without prejudice PRM-26-3 and PRM-26-5 for the reasons discussed in this document.

Dated at Rockville, Maryland, this day of 2020.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
SECRETARY

AXC edits

Mr. Robert N. Meyer
Professional Reactor Operator Society
E-mail: robt.meyer@gmail.com

Dear Mr. Meyer:

I am responding to the petition for rulemaking (PRM) dated October 16, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092960440), that was submitted by you on behalf of the Professional Reactor Operator Society (PROS), to the U.S. Nuclear Regulatory Commission (NRC). The petition was docketed as PRM-26-3 and requested that the NRC amend its regulations in Title 10 of the *Code of Federal Regulations* Part 26, "Fitness for Duty Programs," to change the term "unit outage" to "site outage," used in § 26.205(d)(4) and (d)(5) and that the definition of "site outage" should be provided to read as "up to 1 week prior to disconnecting the reactor unit from the grid and up to 75-percent turbine power following reconnection to the grid."

In response to this petition, the NRC initially determined that the issues raised in PRM-26-3 would be considered in a rulemaking activity titled, "Quality Control/Quality Verification" (QC/QV) (Docket ID: NRC-2009-0090) and published a *Federal Register* notice (76 FR 28192) on May 16, 2011 to this effect. In a letter dated April 30, 2011 (ADAMS Accession No. ML110450238), the NRC notified you of this action. On December 9, 2015, the NRC published a notice in the *Federal Register* discontinuing the QC/QV rulemaking (80 FR 76394). Therefore, the NRC is denying PRM-26-3 under 10 CFR 2.803(i)(2). For additional information, please see the enclosed *Federal Register* notice.

Sincerely,

Annette L. Vietti-Cook,
Secretary of the Commission.

Enclosure:
Federal Register notice



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
SECRETARY

AXC edits

Mr. Doug True
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington DC 20004-1218

Dear Mr. True:

I am responding to the petition for rulemaking (PRM) dated September 3, 2010, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML102590440), that was submitted by Mr. Anthony R. Pietrangelo on behalf of the Nuclear Energy Institute (NEI) to the U.S. Nuclear Regulatory Commission (NRC). The petition was docketed as PRM-26-5 and requested that the NRC amend its regulations to refine existing requirements based on experience gained since the regulations were last amended in 2008.

In response to this petition, the NRC initially determined that the issues raised in PRM-26-5 would be considered in a rulemaking activity titled, "Quality Control/Quality Verification" (QC/QV) (Docket ID: NRC-2009-0090) and published a *Federal Register* notice (76 FR 28192) on May 16, 2011 to this effect. In a letter dated April 30, 2011 (ADAMS Accession No. ML110450593), the NRC notified Mr. Pietrangelo of this action. On December 9, 2015, the NRC published a notice in the *Federal Register* discontinuing the QC/QV rulemaking (80 FR 76394). Therefore, the NRC is denying PRM-26-5 under 10 CFR 2.803(i)(2). For additional information, please see the enclosed *Federal Register* notice.

Sincerely,

Annette L. Vietti-Cook,
Secretary of the Commission.

Enclosure:
Federal Register notice