

[7590-01-P]

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

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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 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 rule¹ in 2008² 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 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.

¹ ["Fitness for Duty Programs; Final Rule," 73 FR 16966 \(March 31, 2008\).](#)

² ["Fitness for Duty Programs; Final Rule," 73 FR 16966 \(March 31, 2008\).](#)

(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) dated May 19, 2015, 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

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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).

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

Under § 2.803(i)(2), if after closing the docket for a PRM under § 2.803(h)(2)(ii) by addressing it in an ongoing rulemaking, the NRC ~~determines~~ decides not to complete ~~a the~~ rulemaking, ~~any associated the~~ PRM is documented as a denied denial 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.

