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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Public Meeting

DISCUSSION OF SECY-78-496 - 10 CFR PART 21  
APPLICABILITY TO NON-LICENSEE SUPPLIERS OF COMMERCIAL  
GRADE ITEMS

Room 1130  
1717 H Street, N.W.  
Washington, D.C.

Tuesday, 3 October 1978

Hearing in the above-entitled matter was convened,  
pursuant to notice, at 10:10 a.m., CHAIRMAN JOSEPH M. HENDRIE,  
Presiding.

PRESENT:

JOSEPH M. HENDRIE, Chairman  
RICHARD KENNEDY, Commissioner  
PETER BRADFORD, Commissioner  
JOHN AHEARNE, Commissioner

W. Campbell, Jr.  
R. Minogue  
W. Dircks  
H. Shapar  
J. Kelley  
P. Comella  
V. Stello  
W. T. Russell  
M. Thorburg  
W. Reinmuth  
M. Peranich

P R O C E E D I N G S

CHAIRMAN HENDRIE: Good morning.

The Commission meets this morning to discuss some clarification of Part 21 Applicability to Nonlicensee Suppliers of Commercial Grade Items.

I have a certain amount of speech impediment, which we will have to live with for some time. I trust it won't make the proceedings any more difficult than necessary.

Can people in the back of the room hear me? Maybe I ought to bring this microphone in a little more closely than it is my custom, since I am not able to muster much volume.

Bill, I see you have a staff arrayed. Good morning.

Please go ahead.

MR. DIRCKS: The paper we are talking about is 78-496, Mr. Chairman. Bill Campbell of the Office of Standards Development will do the honors.

CHAIRMAN HENDRIE: All right, Bill, go ahead.

MR. CAMPBELL: Good morning.

The purpose of this presentation is to inform the Commission of the impact of 10 CFR Part 21. And the impact is that the availability of numerous items that are necessary for plant startup, or may required in the immediate future to allow a return of power, has decreased.

An indication of lowered availability is that suppliers are either refusing to sign a contract or purchase



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1 order to deliver the item. And some of these items in question  
2 are completed items that are already in stock.

3 This impact can be attributed to a number of factors  
4 which include an industry overreaction and imprecise drafting  
5 of the Rule by the Staff initially.

6 The pact was not either foreseen by the Staff, or  
7 intended by the Staff.

8 The second part of our purpose today is to seek  
9 the Commission approval for a Notice of Rulemaking.

10 The Staff recommendation is for effectively,  
11 immediate rulemaking that will define a class of items by  
12 the term "commercial-grade items" that will not be within Part  
13 21 until that item is dedicated. And the definition of  
14 commercial-grade item and dedication will be discussed later.

15 As background, the Energy Reorganization Act of  
16 1974 was the purpose -- or was the cause of Section 206 and  
17 Part 21 being implemented. A complete text of Section 206 is  
18 contained in Enclosure 1 of the Commission paper.

19 May I have the first slide, please?

20 (Slide.)

21 There are four statutory provisions of Section 206.  
22 The first, 206(a), provides a requirement that under certain  
23 conditions, that specific identified individuals notify the  
24 Commission of an event.

25 Slide 2, please?



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1 (Slide.)

2 The second, part (b), provides that these individuals  
3 shall be subject to a civil penalty under specified conditions.

4 Slide 3, please?

5 (Slide.)

6 Part (c) requires some posting of information being  
7 accomplished in specific locations.

8 Slide 4, please?

9 (Slide.)

10 Part (d) authorized the commission to conduct  
11 reasonable inspections and other enforcement activities.

12 Since the Energy Reorganization Act, Public Law  
13 93-438 was not self implementing, NRC was required to issue  
14 a regulation. The regulation was issued as 10 CFR Part 21,  
15 and the regulation was discussed with the Commission on numerous  
16 occasions and the papers are cited in the paper.

17 Two of the major issues identified to the Commission  
18 were -- Please put slide 5 on.

19 (Slide.)

20 -- how should a supplier be advised of the applicability of  
21 Part 21?

22 This is where the issue of bringing sub-tier  
23 suppliers, giving them knowledge of Part 21 was discussed.

24 Slide 6, please?

25 (Slide.)

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1 The next major issue was, how should the Commission  
2 define basic component? That is, how far down the tiers of  
3 suppliers should Part 21 be applied?

4 As an enclosure to the paper you have the definitions  
5 of basic component and a few other terms from 10 CFR Part 21.  
6 The previously-mentioned statutory provisions 260 were imple-  
7 mented by specific provisions of 10 CFR Part 21.

8 10 CFR 21.31 procurement document provides the  
9 resolution of the first major question. That is the entity issuing  
10 of procurement documents subject to the regulations in this  
11 part must assure that when applicable the provisions of 10 FR  
12 Part 21 are invoked in the procurement document.

13 May I have slide 7, please?

14 (Slide.)

15 This is an implementing provision of 10 CFR Part 21,  
16 so that the lower tier suppliers would know 21 applied to them.

17 Slide 8, please?

18 (Slide.)

19 The second of the two major questions was answered:  
20 one way for power reactors, and in another manner for facilities  
21 and activities other than power reactors.

22 This is the definition that was used for the non-  
23 power reactor facilities. And this comes out of 21.3(a) as we  
24 implemented it.

25 For power reactors the question was answered in a

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1 different manner, and this was based upon the usage that was  
2 common in the industry --

3 Next slide, please?

4 (Slide.)

5 -- of some existing words and phrases that had been combined  
6 in some well-understood terms.

7 The intention behind the use of these terms was  
8 to avoid a whole new complex set of regulatory requirements  
9 to be invoked in the procurement process.

10 These terms were and are part of the regulatory  
11 framework. But possibly due to the potential civil penalties,  
12 up to \$5000 a day, industry is overreacting by putting reference  
13 to 10 CFR Part 21 in many locations. Some of these are  
14 inappropriate, such as orders for steel for automobile car  
15 bodies.

16 And another case where it has been invoked  
17 improperly is for all piping with a reactor plant site. This  
18 is slushing water piping, the draining piping and the toilet  
19 piping.

20 In anticipation of problems associated with imple-  
21 menting the complex rule, the Commission asked that informational  
22 meetings be held with industry to explain the rule. Five of  
23 these were held in July of 1978, and that was six months prior  
24 to the full effectivity of the rule.

25 At these meetings questions were posed by industry



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1 and the Staff --

2 MR. MINOGUE: It was 1977.

3 MR. CAMPBELL: July '77, excuse me. Six months  
4 prior to the full effectivity, which was last January.

5 And at that meeting, questions were posed by industry  
6 both verbally and in writing, and in October of last year, the  
7 Staff provided written answers as guidance to the industry.  
8 This is called NUREG 0302 and is available through the NTIS.

9 In regard to questions related to the number of  
10 items that were to be included, that's how many tiers down, the  
11 Staff stated that all organizations, activities and products  
12 that were utilized in the design, fabrication, construction and  
13 operation of a power plant are not such that they could create  
14 a substantial safety hazard.

15 So in the briefings with industry we identified the  
16 fact that it did not go all the way down to the Mesabi Range  
17 for steel.

18 In response to questions concerning off-the-shelf  
19 components or catalog items, the Staff reply was that yes, those  
20 did come within 10 CFR Part 21 if the failure of them could  
21 create a substantial safety hazard.

22 The problem that we find facing the Commission is  
23 correct implementation of the sense of the Commission when it  
24 originally approved the publication of 10 CFR Part 21.

25 At headquarters we have received over 65 written

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1 inquiries since 10 CFR Part 21 was published, that were  
2 directly related to the question of the applicability to sub-  
3 tier suppliers of commercial grade items.

4 A significant number of responsible firms are  
5 refusing to provide quotations on orders invoking 10 CFR Part 21.

6 In enclosure 1, attachment B of the Commission  
7 paper, there are extracts from seven letters on this subject  
8 that raise the issue of safety, raise the issue of an increased  
9 price or schedule impact.

10 Industry in comment on the proposed rule, saw  
11 the problem -- this is when they comment on the proposed  
12 rule over two years ago -- they saw the problem and commented  
13 on it. Some of their comments are included in Attachment A to  
14 enclosure 1.

15 As of now, the Staff has received 14 requests for  
16 exemption related to sub-tier supplier in the first seven  
17 months of effectivity. Eight of these are from power reactor  
18 licensees, and one of these has been granted. While in a  
19 legal sense it is an exemption, in layman's terms it would  
20 more appropriately be termed as a delay in effectivity for a  
21 specific time for a specific product used at a specific power  
22 plant.

23 COMMISSIONER KENNEDY: What does that mean?

24 MR. CAMPBELL: There is a certain type of a relay  
25 needed by a plant, and the company that was making the relay said,

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1 the program that they wanted to put in place was so complex  
2 that they couldn't get it in place by January 1976, and he  
3 came in and said, "I want a delay of effectivity of the program  
4 at my plant." And I believe it was for 60 days.

5 Do you remember, Bill? Was it 60 or 90?

6 MR. RUSSELL: It was nine-months delay.

7 MR. CAMPBELL: January of 1978, the rule became fully  
8 effective.

9 And Philadelphia Electric requested an exemption for  
10 one type of a relay that they needed, and that has been granted.

11 COMMISSIONER KENNEDY: What is the effect as to that  
12 relay after this period of delay expires?

13 MR. CAMPBELL: That relay will totally be within the  
14 scope of Part 21 as are all other commercial-grade products  
15 at this time.

16 COMMISSIONER KENNEDY: Is somebody going to raise  
17 a question about safety considerations associated with the use  
18 of that relay in the plant if it is already installed?

19 MR. CAMPBELL: The question could be raised, but I  
20 would like to defer to someone from the reactor side, to NRR,  
21 if they would like to address that subject.

22 MR. STELLO: I think that relay maybe isn't the one  
23 we ought to talk about. Let me cite one other example first.

24 We have a problem on Oconee where they have applied  
25 for an exemption because they have had difficulty with their



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1 relays. And we issued a bulletin asking them -- that licensee  
2 and others -- to change them.

3 They tried to purchase new relays, and the company  
4 they tried to purchase them from to fit their design, do not  
5 want to supply the relays under Part 21.

6 The problem goes even lower in the sub-tier  
7 suppliers with the people --

8 COMMISSIONER KENNEDY: And there is no other source?

9 MR. STELLO: Well people who make the parts for  
10 the relays, screws, bolts, slugs, springs, plastic, will not  
11 agree to supply those parts under Part 21. So they are having  
12 difficulty now getting replacement parts for their plant, which  
13 is a better relay than the one they have, and more reliable.

14 And they aren't able to do that.

15 So with respect to all of the components that are  
16 in the plant today, those components were all supplied  
17 differently than they would be supplied today under Part 21.  
18 So the question you raise is applicable to every component in  
19 the plant, since it was installed prior to Part 21.

20 To the extent that that question is applicable, it  
21 is applicable to everything that is in the plant.

22 COMMISSIONER KENNEDY: My question is, to what  
23 extent is the question a serious question?

24 MR. STELLO: I don't think it is.

25 The real serious question is the availability to get

mm11 1 the replacement parts in the future. I think that is the serious  
2 question.

3 MR. MINOGUE: I think the issue to recognize here is,  
4 we are concerned about the material that is produced in large  
5 quantity for a number of applications before it is dedicated  
6 to nuclear service. Once it is dedicated to nuclear service,  
7 then clearly it should come under Part 21.

8 It is in that previous period where the concern  
9 rises.

10 COMMISSIONER KENNEDY: It is the assembler who is  
11 the guy who should be affected, not the basic manufacturer.

12 MR. MINOGUE: That's right.

13 Once it is dedicated to a nuclear service, then it  
14 should properly come under the kinds of provisions in Part 21.

15 COMMISSIONER KENNEDY: We will get to it, I guess,  
16 but what keeps troubling me is, if that is true, how does that  
17 assembler give effect to Part 21?

18 MR. CAMPBELL: We will take that up.

19 To recap on the exemptions received, one has been  
20 granted. This is legally an exemption, but it is really a  
21 delay in effectivity in layman's terms.

22 We have received from from -- not from licensees.  
23 They were from nonlicensees, and all five of these have been  
24 denied, some for cause and some for insufficient information.

25 The remaining eight are pending at NRR now, exemptions,

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1 and the details of some of these exemptions can be gone into  
2 greatly with NRR. One of them Vic just mentioned.

3 At least one plant has made a commitment to NRC to  
4 accomplish some specific work prior to the next startup. But  
5 the material to accomplish the work is not available solely  
6 because of the impact of 10 CFR Part 21. The material is  
7 already produced to the same quality level as the previous type  
8 material was, but the supplier will not supply it.

9 COMMISSIONER BRADFORD: What standard do you use in  
10 deciding whether or not to grant an exemption.

11 MR. CAMPBELL: The exemptions are granted through NRR,  
12 the Program Office, or NMSS. And I would rather have NRR  
13 answer that, sir.

14 COMMISSIONER BRADFORD: What is the basis for granting  
15 an exemption?

16 What does the person seeking it have to show?

17 MR. STELLO: The requirements are contained in the  
18 regulation, but the particular instance we were talking about  
19 is a specific exemption to a licensee, to a utility. It was not  
20 an exemption to a manufacturer, it was just to the one utility.

21 And the thing that we were looking for is the  
22 demonstration of need, that he had made a reasonable effort,  
23 that it was clearly in the public interest to do so. And  
24 that the essential ingredients, in terms of assuring ourselves  
25 that we didn't have a health and safety problem by the action



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1 that we were taking, I think were the basic elements we were  
2 looking for.

3 And I think we are satisfied in this case.

4 COMMISSIONER BRADFORD: And the five cases of  
5 manufacturers you felt there was not a sufficient need shown?

6 MR. STELLO: We have delayed and deferred taking a  
7 final position on the other exemptions related to this matter.

8 In one instance, we told them that for the moment  
9 we have denied your exemption, but if there was a need, i.e.  
10 the plant had to shut down because they didn't have a replace-  
11 ment part, they should come back to us and let us know. And if  
12 that was the situation, we clearly would reconsider it.

13 But + really no need in those cases. The  
14 need was not there to do it now.

15 COMMISSIONER BRADFORD: I see.

16 So a manufacturer would have quite a hard time  
17 showing need on his own. He would have to have a licensee as  
18 well, saying that the part was urgently necessary?

19 MR. STELLO: All of these exemptions are with  
20 licensees, utilities. They are not with manufacturers.

21 COMMISSIONER BRADFORD: But the manufacturers, as  
22 I understood, have applied for --

23 MR. CAMPBELL: We have had two manufacturers; a  
24 nuclear steam system supplier, asking for a generic one. And  
25 he just didn't supply enough information.

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1 COMMISSIONER KENNEDY: This is a different problem.

2 You are talking about the fellow who is manufacturing  
3 screws, nuts, bolts and pipes.

4 And you are talking about these two cases, I assume,  
5 the nuclear steam supply system supplier?

6 MR. CAMPBELL: There was a nuclear steam system and  
7 an electrical manufacturer, a broad electrical --

8 MR. MINOGUE: In a sense they are really more  
9 analogous to utilities in the purchase of supplies.

10 I think it is a comment though, that we need to make,  
11 that this kind of problem which is really generated because of  
12 the way the rule ended up being applied, is best handled by  
13 rulemaking, rather than we sit here and wait for the large  
14 numbers of exemptions we would do case by case. But really, to  
15 try to sit down and look again, take a harder look at the  
16 process by which stuff is bought, and the point in that process  
17 where it really begins to take on some safety significance.  
18 And try to correct the matter by modifying the rules.

19 And that is really what we are proposing.

20 And certainly, in the discussions I have had with  
21 Mr. Case on it several months ago, there was a feeling that the  
22 best way to do this was not to be worried about a lot of  
23 exemptions, but to try to go back and restructure the  
24 regulations in a manner that is more clearly applicable to the  
25 process.

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1 I think in fact what we have here, as Mr. Campbell  
2 said earlier, is a mix of industry overreaction and poor drafting  
3 on the part of the Staff when the rule was first formulated.

4 MR. SHAPAR: Generally speaking, a wholesale request  
5 for exemptions, are at least a tipoff there may be something  
6 wrong with the rules drafted. And it is certainly better  
7 administrative practice, rather than granting wholesale  
8 exemptions, to try and cure the rule in a generic fashion.

9 COMMISSIONER BRADFORD: Now, are we yet at what you  
10 call the "wholesale-request-for-exemption" stage?

11 MR. SHAPAR: I would say 14 I would call wholesale,  
12 rather than retail.

13 (Laughter.)

14 MR. MINOGUE: Particularly my perception is,  
15 because what we are doing is widely known, we now are in a  
16 very open operation here, that a lot of people are waiting to  
17 see how the Commission acts on this rule change before they  
18 send in an exemption.

19 I think there is quite a large number of potential  
20 applications for exemption out there.

21 MR. STELLC: I wanted to indicate that we had a  
22 meeting with DIF and they indicated to us that they are  
23 waiting for the outcome of this meeting. And depending on  
24 which way it goes, there are an awful lot more out there. The  
25 number will get very large in the very near future.



mm 1 MR. MINOGUE: I have exactly the same understanding  
2 from other sources.

3 MR. CAMPBELL: The Staff has reviewed a number of  
4 alternatives and recommends that rulemaking be accomplished.

5 The Staff believes that this rulemaking will make  
6 the regulation more in line with what the Staff intended when  
7 the rule was initially drafted and be less susceptible to mis-  
8 interpretation by the Commission of the rule as currently in  
9 place.

10 The central part of the rulemaking are two new  
11 definitions; commercial-grade item and dedication.

12 An item that meets the definition of a commercial-  
13 grade item will not be within the scope of 10 CFR Part 21 until  
14 the item is designated for use as a basic component.

15 (Slide.)

16 The definition of commercial-grade item is contained  
17 on this slide, and is also in the paper in enclosure 5, page 5.

18 There are three tests that would be applied to an  
19 item to find out whether or not it met the definition of a  
20 commercial-grade item. The first test is, is there anything  
21 specific in its design or specification requirements that are  
22 unique to facilities or activities licensed in accordance with  
23 one of the parts of our regulation.

24 The second test would be, it has to be used in  
25 applications other than licensed facilities and activities.

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1 And the third is, it has to be ordered from a  
2 manufacturer -- be able to be ordered from a manufacturer or  
3 buyers' catalog based upon his published product definition.

4 The key facets in item one are that it has to be  
5 a uniqueness test.

6 Two, it is used someplace else.

7 And the public-product description of the  
8 manufacturer. It was specifically chosen as a manufactured  
9 public-product description, to rule out descriptions that are  
10 made up by distributors and suppliers.

11 The procurement document for an item that meets this  
12 definition would not include a reference to 10 CFR Part 21.  
13 The procurement would be governed by the normal business law  
14 and terms and conditions mutually agreeable to the two parties.

15 The second major part of the rulemaking is the use  
16 of the term --

17 COMMISSIONER AHEARNE: You had pointed out that the  
18 current written rule has led to confusion.

19 Is this -- why are you now confident that this  
20 definition will be sufficiently clear that there will be no  
21 confusion?

22 MR. CAMPBELL: I think it is less susceptible to  
23 confusion. We have received a number of, so-to-speak, unsolicited  
24 proposals for rulemaking where they used specific words, and  
25 these words are much narrower than some of the broad requests

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1 that various segments of industry have asked for.

2 COMMISSIONER AHEARNE: Have you cycled this defini-  
3 tion at all through the industry to see whether this meets  
4 that clarity test?

5 MR. CAMPBELL: Not the actual words, sir, but the  
6 intent of them.

7 And the feedback that we have gotten so far is that  
8 it will solve the problem.

9 COMMISSIONER AHEARNE: But if the intent is to be  
10 clear and solve the problem, then they would definitely agree.

11 I was just wondering --

12 MR. CAMPBELL: No, they have not seen the actual  
13 words as written here, sir.

14 CHAIRMAN HENDRIE: Bill, you need to go on, I think  
15 for me, and get I think the second definition in place before  
16 I see how the mechanism works.

17 You know, so far so good. But now how do you sort  
18 out the dedication to nuclear service which brings the component  
19 under Part 21?

20 MR. CAMPBELL: Fine.

21 The second definition that would be -- Slide 11,  
22 please?

23 (Slide.)

24 This is the second definition, and dedication would  
25 occur after receipt of an item, when that item is



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1 designated for use as a basic component.

2 CHAIRMAN HENDRIE: After receipt by a licensee?

3 MR. CAMPBELL: No, sir. No, sir. Not necessarily.

4 Now as an example of how should this be applied, is  
5 a safety-related valve that complies with the requirements of  
6 ASME Section III, Class 2.

7 Clearly that has unique nuclear requirements with  
8 ASME Section III. Nuclear is the only thing that uses Section  
9 III. That is what they are designed for.

10 If a utility were to order a valve, of course that  
11 valve would have Part 21 invoked in it. The valvemaker has  
12 to buy -- would you look at, I think it is the 15th or 16th  
13 slide that has a valve layout on it?

14 The valvemaker would be required to buy a number of  
15 things. He would have to buy a valve body --

16 (Slide.)

17 -- he'd have to buy a valve stem, and he'd have to buy a valve  
18 disc.

19 Now clearly the body is a pressure-retaining boundary  
20 and that comes under ASME Section III. So it would be  
21 appropriate, if the valvemaker bought the body from someone,  
22 to invoke Part 21 on the casting. But now that man who is  
23 making the casting, he has to get some scrap and he has to  
24 get some ore someplace.

25 Now he uses that same scrap and he uses that same

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1 ore to throw into his furnace to make the nuclear-grade valve,  
2 the API valve, or the MSS valve.

3 So when the casting maker goes out and he makes an  
4 order, he would not put 10 CFR Part 21 in it.

5 And I've tried to show with the solid lines in there  
6 where clearly the Part 21 would be invoked in the procurement  
7 of the valve. But when the valvemaker goes out and buys the  
8 valve stem, now he could use the same valve stem out of one-  
9 inch round 410 stainless steel in all of his valves. And he  
10 buys it to a plane, either a mil spec or an ante spec, and  
11 fabricates the stems in his plant. And still there would be  
12 no dedication take place because he would use that same valve  
13 stem with the same square thread across his whole line of  
14 products.

15 But it is our intention that at the time the order  
16 is being filled for the valve stems for that nuclear valve,  
17 at that point in the lifetime, those valve stems would then come  
18 under 10 CFR Part 21, at that time and from there forward in  
19 the lifetime.

20 COMMISSIONER KENNEDY: Who would be responsible  
21 then, under Part 21?

22 MR. CAMPBELL: In this example it would be the  
23 organization that made the valve. They would be --

24 COMMISSIONER AHEARNE: Would you prohibit him from  
25 applying Part 21 to the stem maker, or would you not require him

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1 to apply it?

2 MR. CAMPBELL: It would not be required.

3 COMMISSIONER AHEARNE: But he could if he wished to?

4 If, for some reason, he wanted to try to pass off  
5 the responsibility, this burden that seems to be on him, he  
6 could apply it?

7 MR. CAMPBELL: It was not the intention to prohibit  
8 that. I don't know why it would.

9 MR. MINOGUE: Also, I don't see how that would lessen  
10 his responsibility in any way.

11 I think the important point, though --

12 COMMISSIONER KENNEDY: Well, I guess I don't know  
13 that that is necessarily the case.

14 MR. SHAPAR: Well, the rule would be creating a legal  
15 effect. If the rules are written clearly enough so that only  
16 certain people were responsible under a regulation, I don't  
17 see how somebody, as a matter of commercial contract, could make  
18 a regulation and a law applicable where it is not otherwise  
19 applicable.

20 COMMISSIONER AHEARNE: The way my question was, is  
21 it required, or can he do it?

22 Now, if the law permits him to pass that requirement  
23 on --

24 MR. SHAPAR: The law is not self executing in major  
25 aspects. It is subject to the rules and regulations of the



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1 Commission.

2 So the real determination of this would be made at  
3 the Commission's rulemaking.

4 MR. CAMPBELL: 10 CFR Part 21 would have to be  
5 passed down via a contractual two-party agreement. And if the  
6 lower tier person determined that 21 should not be applied,  
7 that it was not legally required, this could be discussed in  
8 negotiations.

9 MR. MINOGUE: What a person really determines in the  
10 procurement chain is that he designates this item is going to  
11 be used in nuclear service. And it is that action that brings  
12 the rest of it in place. He is not saying this is under Part 21  
13 or not, so much as he is saying this particular component from  
14 this point on is dedicated to some nuclear application.

15 That might be made at any tier in the procurement  
16 chain. It is not necessarily by the utility.

17 CHAIRMAN HENDRIE: Now, how does one -- as I understand  
18 the dedication to nuclear service, how does one further designate  
19 those components that are dedicated to nuclear plant service  
20 for which a defect could create a substantial safety hazard?

21 MR. CAMPBELL: This would be a decision tree that  
22 starts with the licensee and is NSSS in the same way that they  
23 determine other safety relatedness characteristics to  
24 differentiate the nameplate on the pump and the pump shaft, its  
25 impact upon safety.

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1 They would be making the same kind of decisions  
2 that they are now, and this information would be passed via  
3 10 CFR 21 in the procurement documents.

4 But it is being found now, that this is being passed  
5 way down, almost to the Mesabi Ore Range and giving unnecessary  
6 breadth and scope, such that the supply is being cut off.

7 MR. MINOGUE: The act of deciding whether something  
8 constitutes a defect that would cause a substantial safety  
9 hazard would not be changed by what we are proposing here.  
10 It is made at some point in the tier of suppliers. It can  
11 be passed towards the ultimate supplier. A particular sub-tier  
12 supplier that didn't have the expertise to do it, he could  
13 pass that determination to his customers.

14 That's all covered in the regulation as it exists  
15 and we wouldn't propose a change there.

16 MR. CAMPBELL: For an item that is clearly nuclear-  
17 related, this rule would have no changes whatsoever on it.

18 Reactor pressure boundary piping, for instance.

19 COMMISSIONER KENNEDY: Why are we making this  
20 immediately effective?

21 MR. CAMPBELL: We will get to that.

22 CHAIRMAN HENDRIE: We have got an immediate problem.

23 MR. CAMPBELL: Slide 12, please?

24 (Slide.)

25 There will also be some conforming amendments to

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1 21.2 in the definition section, and 21.3.

2 Slide 13, please?

3 (Slide.)

4 This would be in the scope to allow any lower-tier  
5 supplier, if he felt that there was information that the  
6 Commission should be aware of, it will allow him to come to  
7 the Commission and identify that the same as we have done in  
8 the initial rule for people who are beyond the scope, to allow  
9 them to talk to the Commission directly.

10 Slide 14, please?

11 (Slide.)

12 And this is to clarify in the present exemption  
13 section, the fact that commercial-grade suppliers are only  
14 exempt from Part 21 as far as their commercial items.

15 If they were producing both commercial and nuclear  
16 items, the fact that they were exempt on the commercial side  
17 would not exempt them from the nuclear side.

18 MR. SHAPAR: GE might be a good example.

19 MR. CAMPBELL: Corporate GE is a very good example  
20 where their Switch Gear Division may be exempt from Part 21  
21 on a motor controller; they would not be exempt on their reactors.

22 As regards to the timing of this rulemaking, the  
23 industry has commenced having problems with the implementation  
24 of the rule early in the spring of 1978.

25 It became effective in January; notifications were



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1 put in procurement documents in January. And as early as  
2 late February, we were receiving telephone calls about the  
3 problem.

4 The Staff commenced investigation of the problem and  
5 has determined that the problem is a real one and is not an  
6 illusory problem.

7 The Staff determined also that the problem was  
8 caused by an application of the rule that was not intended by  
9 the Staff, and an application that the Staff did not intend  
10 to convey to the Commission at the time of the initial rule-  
11 making.

12 COMMISSIONER KENNEDY: Would you comment now, having  
13 said that, on the point that you made much earlier, that many  
14 of the suppliers, the commenters had noted something to this  
15 effect before the rule was put in place.

16 MR. CAMPBELL: The comments were read at that time  
17 and I believe one of them was by a large electrical trade  
18 association, and the Staff felt at the time, they had drafted  
19 a rule that could be reasonably cut off at a lower-tier  
20 supplier.

21 But the fact that it is not being done, we think, is  
22 overreaction. Industry did comment on it, and those are  
23 contained --

24 MR. MINOGUE: I would like to add a comment to  
25 that, speaking from the perspective of Staff.

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1           When the rule was being drafted in its final form,  
2 we perceived much the same problem and felt at that time that  
3 the wording we proposed would make it possible to basically go  
4 back through these tiers of suppliers, just as far as the  
5 normal licensing review and the application of Appendix B, the  
6 Quality Assurance Criteria would take you.

7           So there was a feeling which appears now to have  
8 been incorrect, that that wording would not generate a whole  
9 new complex going further back into the supply chain, but  
10 would go as far as has already done in the context of the  
11 licensing process. That is as far, really, as matters of  
12 real safety significance are concerned.

13           So I think we saw the problem on this end too. But  
14 not as clearly as we see it now, when the rule was being  
15 drafted, and did not come up with an adequate fix.

16           MR. CAMPBELL: From the available courses of action,  
17 the Staff recommends that the rule be published, effective  
18 immediately, since the amendments are intended, in part, to  
19 respond to a number of requests for exemption and since the  
20 amendments narrow the scope of the regulation without any  
21 significant adverse safety consequences.

22           The Staff believes good cause exists for omitting  
23 the Notice of Proposed Rulemaking and Public Procedure.

24           If public comments are received, they will be  
25 considered by the Commission in due course. Central to this

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1 is what was originally intended by the Staff, and what does  
2 the Staff feel the Commission originally intended.

3 The Staff did not intend that the rule go way back  
4 to the bottom nut and bolt supplier.

5 MR. SHAPAR: In all fairness I don't think we can  
6 say that this proposed rule is what the Commission originally  
7 intended. I don't think it is clear on this point in my  
8 own perception of being at Commission meetings and having  
9 reviewed the papers.

10 I don't think we can tell you today that the  
11 amendment we are proposing is what you originally intended.

12 MR. MINOGUE: When I discussed this with the Commission  
13 at the time, I think the emphasis was on Reg Guide 129 and the  
14 application of Appendix B explicitly.

15 And of course the question is broader than that. So  
16 I think Mr. Shapar may well be right.

17 We may not have -- certainly the record doesn't  
18 suggest that we aired this problem fully with the Commission.  
19 It was discussed though to some extent. At least in the context  
20 of the application of Appendix B.

21 COMMISSIONER KENNEDY: It is fair to say that  
22 certainly in my recollection, the Commission did not intend  
23 the result which seems to have followed.

24 MR. MINOGUE: There was a great deal of discussion  
25 of how far back in the tier, in the awareness of the complexity



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1 of the regulatory process that you could generate, to go  
2 back further than you really need to.

3 COMMISSIONER KENNEDY: My recollection is, we  
4 raised the nuts and bolts question and concluded at the time  
5 that no, that would not be the result. That that would be an  
6 unreasonable application of the rule.

7 That is my recollection.

8 MR. MINOGUE: Yes, sir that is basically mine also.  
9 We did not draft the rule as well as we thought we had.

10 COMMISSIONER KENNEDY: One more question.

11 Going back to something that Commissioner Ahearne  
12 asked before, how confident are we that again the words are  
13 understood by the industry as clearly as they seem to be  
14 understood here in the same way we intend they be understood?

15 MR. MINOGUE: I would like to try to answer that, if  
16 I may.

17 I think that what Mr. Campbell has done here is to  
18 define a relatively narrow problem, which is the purchase of  
19 off-the-shelf stuff. And I think that wording is clearcut  
20 in that context.

21 I have to be realistic, though, that Part 21 speaks  
22 to an industry of such breadth and complexity, it is a  
23 whole supply chain of a very large industry. There will be  
24 future problems. I am sure this is not the last such  
25 discussion we are going to have. We are going to find other --

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1 I think Congress itself must have had some recognition of this,  
2 because the whole job of implementing this was laid on to the  
3 Commission. It took several years to write Part 21 initially.  
4 It was very difficult and I think what we are really doing here  
5 is fixing a rather sharply-defined problem related just to  
6 off-the-shelf material.

7 And there will be others. This is not going to be  
8 the last time we will be here, I'm sure.

9 COMMISSIONER KENNEDY: To what extent has this --  
10 you indicated the wording has not been discussed.

11 Any reason it couldn't be?

12 MR. CAMPBELL: No.

13 Commission papers are predecisional. The details  
14 of the wording has not -- in discussing the concept and  
15 narrowing some of the industry proposals, industry had asked,  
16 gee, we think this ought to apply to consultants.

17 And we said, no, no we are going to stay just with  
18 products.

19 MR. MINOGUE: See, normally we wouldn't take the exact  
20 wording we are going to propose to the Commission. That would be  
21 for public comment process.

22 But the concept has certainly been discussed. I  
23 have had discussions myself with various people.

24 COMMISSIONER KENNEDY: Are we going to encourage  
25 in this process, further comment on this, even though it is an

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1 immediately-effective rule?

2 MR. MINOGUE: Yes, sir, that was the intent that  
3 we would solicit further comment.

4 MR. CAMPBELL: We have proposed to you as a note in  
5 the Commission paper, kind of an unusual distribution.

6 We are going to distribute the Federal Register  
7 notice to everyone that received a copy of this document through  
8 the public regional meetings. We are going to send a copy to  
9 everyone who bought this document from the National Technical  
10 Information Service, and we will send a copy of it to everyone  
11 that sent in a letter of comment on the proposed rule, or that  
12 has corresponded with Headquarters concerning the effective  
13 rule.

14 MR. SHAPAR: Following up that line, the Federal  
15 Register notice itself could, say, could invite comments. Even  
16 though the rule is effective, give a certain number of days  
17 for submission of comments.

18 We have done that in the past.

19 COMMISSIONER KENNEDY: It does not now?

20 COMMISSIONER BRADFORD: Why doesn't it make more  
21 sense to allow 30 days for comment and make it effective at  
22 the end of that period, assuming that comments haven't been  
23 serviced.

24 I assume that if there are really urgent exemption  
25 requests among those that we have, those could be handled on



mm31

1 the need criteria during the 30 days.

2 MR. MINOGUE: It could be.

3 Of course, we are reluctant to generate a new  
4 workload for NRR.

5 MR. CAMPBELL: It can be done. But this would, for  
6 some of the exemptions pending, I think they must have them  
7 within the next 30 days, was my recollection.

8 If NRR would like to comment on the additional work-  
9 load that they would see with this approach, the ones that they  
10 have to get out in the next 30 days? Vic, or Bill?

11 MR. STELLO: I certainly wouldn't want to suggest  
12 or volunteer to do an awful lot more work. But, if we need to,  
13 I think as you say, if this rule were not changed in the near  
14 future and there were a critical need, we would do exactly  
15 what we had to do.

16 We would have to evaluate those exceptions on a  
17 case-by-case basis, determine that need, and act accordingly.

18 I don't know how many more are waiting in the  
19 wings, is my problem. I really don't know how much of a work-  
20 load it would be.

21 But, if the Commission didn't take action, what you  
22 say is exactly what would happen.

23 MR. MINOGUE: I think that is an important point.  
24 We believe there are a lot of exemption requests, potential  
25 exemption requests sitting out there. And that time delay

mm32 1 might have the effect of precipitating a large flood of these.

2 COMMISSIONER AHEARNE: Did you get any comments  
3 from anyone in favor of no looser, or a tighter rule?

4 In other words, you have been talking about, so far,  
5 the number of comments that you have received that have  
6 indicated that this is too tight a constraint that is being  
7 applied too tightly. And I just wondered whether you have  
8 received any comment of the opposite type?

end T2 9 MR. MINOGUE: None that I'm aware of.

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1 COMMISSIONER BRADFORD: Have we had Congressional  
2 comment on this situation other than it is a regulation that's  
3 been passed to implement an Act of Congress? Has the situation  
4 been discussed at all with the Oversight Committee?

5 MR. MINOGUE: Not at all.

6 MR. SHAPAR: I think there was an interest at  
7 the beginning from the Senate Operations Committee, of course,  
8 who marshalled the Reorganization Act through the Congress.

9 There was some initial interest on what kind of followup the  
10 Commission was undertaking to comply with the statute. As  
11 far as the Oversight Committees are concerned --

12 MR. MINOGUE: I've had no discussion with them.  
13 This is actually a fairly small scale thing, it's big in it's  
14 impact, but it's not a big burning issue. We are talking  
15 about, really, off-the-shelf stuff that's bought out of the  
16 catalogue. I've had no discussions with anybody, with the  
17 Oversight Committee.

18 COMMISSIONER AHEARNE: Howard, could you expand a  
19 little bit on that comment you made a little while ago about  
20 that you really couldn't say that this was what the Commission  
21 had in mind originally?

22 MR. SHAPAR: This is purely a factual question as  
23 to what the Commission intended when they approved the original  
24 rule. I've reviewed the pieces of paper and I was present at  
25 most if not all of the Commission meetings, and it's just



dor 2 1 not my own individual recollection that the Commission  
2 specifically intended one result or the other in connection  
3 with the problems in front of you today.

4 COMMISSIONER KENNEDY: Except to say further, to  
5 reiterate my own recollection, the problem was not perceived  
6 as it turns out to be.

7 MR. MINOGUE: That's right.

8 MR. SHAPAR: I think that's correct.

9 MR. DIRCKS: We were aware of the side effects.

10 COMMISSIONER KENNEDY: But those certainly were  
11 not intended. indeed, the assumption was those problems would  
12 not arise, and I think that's a fair statement of exactly  
13 what the Commission thought. Now how they felt about it you  
14 would have to ask them.

15 MR. SHAPAR: I don't think the Commission ever  
16 promulgates a rule to deliberately provoke trouble.

17 (Laughter.)

18 COMMISSIONER KENNEDY: That may be an overstatement,  
19 I hope it's not.

20 MR. MINOGUE: Particularly with the safety that  
21 would be achieved by it.

22 COMMISSIONER AHEARNE: Howard are you saying that  
23 at least in the previous -- the papers do not clearly state  
24 the intention of the Commission was not to reach down farther?

25 MR. SHAPAR: That's right.

dor 3

1 MR. MINOGUE: I agree with that because one of the  
2 first steps we took was to go back and go through the written  
3 record carefully. Even what discussion was had was not fully  
4 reflected in the written record. It was not documented that  
5 completely.

6 COMMISSIONER AHEARNE: Just a clarification in my  
7 mind. Would this be a correct precis of the effect of Part 21  
8 to require under penalty that the reporting, if there is a  
9 reasonable indication of either a lack of compliance with a  
10 rule or regulation relating to substantive safety, or substantial  
11 -- or to a substantial safety defect?

12 MR. MINOGUE: I am not sure I understand the  
13 question. Could you restate the question, sir, I'm not sure  
14 I understand it?

15 COMMISSIONER AHEARNE: The effect of Part 21, is  
16 the effect of it to require, under penalty, the reporting if  
17 there is any reasonable indication of either one of two things:  
18 lack of compliance, or the indication of a substantial safety  
19 defect?

20 MR. MINOGUE: Under some limited circumstances, yes.  
21 If the component has been delivered and I believe installed,  
22 and so on. But under some limited circumstances the answer  
23 is yes.

24 COMMISSIONER AHEARNE: The effect really is that  
25 you are under penalty to report either lack of compliance, or

dor 4 1 the knowledge of a substantial safety defect.

2 MR. MINOGUE: If the component has been delivered and  
3 installed, right. That's correct, yes.

4 MR. CAMPBELL: But the man that made the spring that  
5 goes in the relay, and he's making these springs for wide  
6 application and it's a commercial grade item, he would not be  
7 under penalty to make a report like that because he is  
8 incompetent in general to determine nuclear safety. He's a  
9 good spring maker.

10 COMMISSIONER KENNEDY: Or a bad spring maker, as  
11 the case may be.

12 COMMISSIONER AHEARNE: Yes.

13 MR. CAMPBELL: He is a spring maker.

14 COMMISSIONER AHEARNE: I guess the point is I could  
15 well understand why the Commission previously didn't foresee  
16 the problem because in reading through it it seemed to be that  
17 the issue was that you had promulgated a regulation saying that  
18 if you see -- that you are under penalty to report if you see  
19 that there is a lack of compliance with the regulation  
20 significantly affecting safety, or a significant safety defect.

21 Now that, just as a layman, a citizen on the outside  
22 looking at it, that seems quite reasonable and I guess what  
23 all this paper work says is the industry has found that they  
24 are unwilling, at various stages, to take that upon themselves,  
25 that responsibility, and are passing it down the line.



dor 5

1 MR. MINOGUE: The people who are building something  
2 that they know is directly, and immediately, for a nuclear  
3 application are not the ones that raise the issues. It's the  
4 people who are building widgets, and this is one widget out  
5 of tens of thousands, they have no way of knowing that that  
6 particular one will be in a nuclear plant.

7 COMMISSIONER AHEARNE: But aren't the people building  
8 the components passing that down to the people building widgets.  
9 They're sticking that into procurement contracts.

10 MR. MINOGUE: That's correct. They're putting it  
11 into the purchase contracts.

12 COMMISSIONER AHEARNE: Because they don't want to  
13 take it upon themselves, they want the guy that's supplying  
14 them --

15 MR. SHAPAR: But they're not necessarily escaping  
16 liability themselves by putting it in the procurement document.  
17 They may be getting somebody else along with them, but they  
18 are not escaping themselves.

19 COMMISSIONER KENNEDY: That's the whole point.

20 COMMISSIONER BRADFORD: Why would they stop? What  
21 is there about this change that would make them feel that  
22 that was no longer necessary?

23 MR. MINOGUE: Because the person who supplies, or  
24 who sells you this one out of tens of thousands of widgets  
25 that he makes, would no longer be covered. So there is no

dor 6 1 reason for them to -- you know they have no obligation to  
2 notify him or assure that he does certain posting.

3 CHAIRMAN HENDRIE: The language just makes it  
4 sufficiently clear that the sub-tier supplier who is supplying  
5 a commercial item of which a few go over here into nuclear  
6 service, the language is very explicit and clear that he is  
7 not responsible. That the responsibility accrues as soon as  
8 these few go over here and go into a thing which is known to  
9 be headed for nuclear service, nuclear safety service. And  
10 the guy who assembles that without intent then acquires that  
11 responsibility.

12 MR. MINOGUE: That's right.

13 COMMISSIONER KENNEDY: And the burden then is on  
14 him having a quality assurance program for receipt of those  
15 materials.

16 CHAIRMAN HENDRIE: But the division between those  
17 two steps is now in this language very clearly laid out.

18 COMMISSIONER BRADFORD: But I assume that the person  
19 at which the point that it's clear that the responsibility is  
20 on him would still have some incentive to try and include it  
21 in the procurement contracts. What you are saying that the  
22 person, once they are further down, is now in a better position  
23 to say no?

24 MR. MINOGUE: No, I don't think the person would  
25 have an incentive. He is really buying an off-the-shelf piece

dor 7 1 of equipment out of a catalogue.

2 MR. SHAPAR: He's increasing the cost to him.

3 COMMISSIONER AHEARNE: Right now does he have to  
4 include it in that?

5 MR. MINOGUE: Yes. The regulation has been read  
6 to mean that, has come to mean that.

7 COMMISSIONER AHEARNE: I didn't ask the way it has  
8 been read to mean.

9 MR. CAPBELL: It says when applicable.

10 COMMISSIONER AHEARNE: I didn't ask the way it has  
11 been read to mean. I'm saying does it strictly have to read  
12 that? Could he have read it otherwise?

13 MR. MINOGUE: I think what we have here is a  
14 combination of poor drafting and over reaction. There is an  
15 element of both.

16 COMMISSIONER KENNEDY: The over reaction may be  
17 a function of the poor drafting on the one hand, and wise and  
18 careful attorneys on the other.

19 MR. MINOGUE: Given there are civil penalties  
20 running over you here, and they could be substantial, there  
21 is a natural tendency to over react, to be extra careful, to  
22 cover the risk.

23 COMMISSIONER KENNEDY: Currently if he fails to  
24 put it in the procurement contract he is in violation with the  
25 regulation.



dor 8

1 MR. MINOGUE: That's right.

2 COMMISSIONER AHEARNE: That's the way it's read.

3 COMMISSIONER KENNEDY: No, no. If he fails -- if  
4 in fact it should be in the contract and he fails to put it  
5 in --

6 COMMISSIONER AHEARNE: If it should be.

7 COMMISSIONER KENNEDY: If it should be and he fails  
8 to put it there then he is in violation of the contract and  
9 therefore what is he going to do? He's going to cover himself.

10 MR. MINOGUE: Quite carefully.

11 COMMISSIONER AHEARNE: But what I gather, in a way  
12 the Staff has been saying you people are over reaching, you  
13 don't have to go that far. They are being told, however,  
14 that well we're just going to be cautious.

15 CHAIRMAN HENDRIE: I think if suppliers' attorneys  
16 felt that the casual assurances of this kind by the Staff  
17 were adequate protection against criminal prosecution under  
18 the Code of Federal Regulations why they'd advise their  
19 clients not to put it in. The fact that they don't suggests  
20 to me that they don't regard that as a very strong protection.  
21 And it seems clear that the Commission, then, ought to make  
22 the language sufficiently clear so that it's meaning is not  
23 in doubt.

24 MR. CAMPBELL: We have had cases where an organ-  
25 ization was procuring the steam generator, obviously under

dor 9

1 10 CFR Part 21 and had been left out and I&E discovered this  
2 and took appropriate action to get it put in. But as to where  
3 to cut it off, people are afraid of \$5,000 and one thing that  
4 Mr. Bradford mentioned about the public comments, there has  
5 been a proposed change to the paper on enclosure 5, page 5  
6 as submitted by the General Counsel which has been agreed to  
7 by the Staff, and it says in there, "However, should public  
8 comments of the members be received, the comments will be  
9 considered by the Commission in due course."

10 MR. SHAPAR: The question raised, though, was  
11 whether or not you want to go one step further based on your  
12 comment, Commissioner, and specifically invite comments and  
13 provide a cut off period.

14 COMMISSIONER BRADFORD: My concern is something that  
15 is as follows: The problem here has been lack of clarity and  
16 I gather there is some problem in the guidance, and maybe some  
17 in the regulations. Well, rather than put something out  
18 immediately effective which may now seem clear to all of us,  
19 would it be preferable to take a little more time and make  
20 sure this time it is clear to all the people who are going to  
21 have to live with it as well? And would we in fact be better  
22 off taking the extra time to have that assurance and deal  
23 with such exemptions as might seem to become urgent in the  
24 thirty days as exemptions?

25

COMMISSIONER AHEARNE: Which is the direction I would

dor 10 1 go.

2 CHAIRMAN HENDRIE: Well, it's a possible course I  
3 must say. My own inclination, because the language is quite  
4 specific and the provision is quite narrowly drafted and seems  
5 to be quite explicit and understandable, my own inclination  
6 would be to make it immediately effect and suggest that any-  
7 body that's got further difficulties let us know and we will  
8 take those up. The reason is that you allow thirty days for  
9 comment and it will be sixty days after that before the  
10 Commission gets around to acting. So you are not looking at  
11 thirty days, you are looking at three months which is the  
12 substantial increment. And I think you're going to have  
13 a whole bloody flock of exemptions to process out there in  
14 NRR that could be avoided by an immediate effectiveness. And  
15 then the invitation comment on the recognition that we may  
16 indeed have to come back and do some cutting and trimming  
17 later on.

18 But if you put it out for comment you are going to  
19 come back and cut and trim on it anyway. You have already  
20 assured that because you have to deal with the problem.

21 What I would suggest is that we make it immediately  
22 effective and see if this rather explicitly drafted provision  
23 in fact solves enough of the implementation problems in hand  
24 so that we don't have to.

25 COMMISSIONER AHEARNE: Would you be willing to have



dor 11 1 the notice explicitly state public comments are invited?

2 CHAIRMAN HENDRIE: Absolutely, absolutely. Because  
3 I think you are quite right. The public comment aspect is  
4 important. I'm just saying to avoid the exemption processing  
5 difficulties that I can foresee over the next three months,  
6 I would prefer to see it an immediately effective rule, but  
7 the public comment thing is certainly important and I would  
8 indeed invite it, yes, indeed.

9 COMMISSIONER AHEARNE: We don't have any procedure,  
10 I gather, by which we can make a rule immediately effective  
11 for an interim period?

12 MR. KELLEY: You could.

13 COMMISSIONER AHEARNE: As a normal practice though  
14 that doesn't --

15 MR. KELLEY: We haven't done it.

16 MR. MINOGUE: Years ago the AEC did that a few  
17 times. That is not a good practice.

18 MR. SHAPAR: You can put out an interim rule and  
19 make it immediately effective, and you can also put out a  
20 proposed rule and put it out for guidance, you can really do  
21 about anything you want.

22 COMMISSIONER BRADFORD: At that point you really  
23 are in the same situation as if you just stamp granted on each  
24 exemption request as it came in the door.

25 COMMISSIONER AHEARNE: Well, but that's what making

dor 12 1 this rule immediately effective does.

2 COMMISSIONER BRADFORD: Exactly.

3 CHAIRMAN HENDRIE: Well, for those exemptions that  
4 fall under it. Except that, as it stands now, in making the  
5 exemptions Vic is going to have to do an individual hand tooling  
6 operation on each one of what are now a dozen odd and may  
7 very well become one hundred in a few weeks.

8 COMMISSIONER AHEARNE: What is the procedural  
9 process? Let's say we make it immediately effective and we  
10 invite comments and in thirty days we have received X numbers  
11 of comments with X being more than 10. Let's say you guys  
12 goofed again, this still isn't going to do it.

13 CHAIRMAN HENDRIE: Then the Staff comes back with  
14 a paper, it comes back with 496A.

15 COMMISSIONER KENNEDY: John's problem, then, is  
16 of course, is there a rule in place that's applicable.

17 CHAIRMAN HENDRIE: Well, the Staff just comes in  
18 and says we want to change it.

19 COMMISSIONER AHEARNE: To change the rule do you  
20 then have to go out with --

21 COMMISSIONER KENNEDY: Another immediately effective  
22 rule.

23 COMMISSIONER AHEARNE: But there is no other form  
24 of process that we can just keep on --

25 MR. SHAPAR: You have your option. Comments will tell

dor 13 1 you that you need a further amendment to the rule. Once you  
2 decide that and you could decide to go out with a proposed  
3 further amendment, or an immediately effective further  
4 amendment.

5 CHAIRMAN HENDRIE: So hold the rule making or do  
6 practically any thing you want.

7 MR. SHAPAR: Or decide the comments don't warrant  
8 further changes.

9 CHAIRMAN HENDRIE: I tell you, my guess is that  
10 with regard to the specific thing that's dealt with in this  
11 new set of words, I have a feeling these are going to be  
12 specific enough, and the discussion here will be helpful if  
13 people read the informal transcript so that the items that  
14 clearly fall under it, I bet you won't have much problem with.  
15 I think you are going to get comment on other aspects of Part  
16 21 which do not fall under the language being discussed here  
17 this morning.

18 But I think that's fair and proper. It's a complex  
19 regulation and I think as we go on and try to live with it  
20 why we are going to find a lot of places where it doesn't  
21 quite fit the intent. But if this rule -- you know, if putting  
22 this piece of language out and inviting comment helps to  
23 shake out some of those other comments, all the better.

24 COMMISSIONER AHEARNE: So Joe you would be willing  
25 to go for asking for comment and say thirty days and cut off?



dor 14 1

CHAIRMAN HENDRIE: Absolutely, I think it's a good  
2 idea.

3 MR. MINOGUE: I think if we got broader comments  
4 in there, it might be very useful. Thirty days is probably not  
5 enough. We probably should tell them forty five days or sixty  
6 days.

7 COMMISSIONER KENNEDY: What's our normal period?  
8 Sixty days?

9 MR. SHAPAR: Sixty days is usual, yes.

10 COMMISSIONER KENNEDY: Why don't we ask for sixty  
11 days?

12 CHAIRMAN HENDRIE: That's nothing, it could go  
13 immediately effective, by relieving the immediate pressure  
14 you help yourselves in terms of allowing --

15 COMMISSIONER AHEARNE: I'll go with that.

16 CHAIRMAN HENDRIE: Sixty days?

17 COMMISSIONER BRADFORD: Let me ask one other question  
18 about what you are talking about here. You say this will  
19 result in a diminution of the overall inspection effort? How  
20 does that work?

21 MR. CAMPBELL: If one has to go and follow with the  
22 inspection effort all of the way down wherever 10 CFR  
23 Part 21 is referenced, and you now take a bunch of the lower  
24 tier suppliers which we have defined as commercial grade  
25 suppliers, we would no longer have to routinely in advance

dor 15 1 by planned inspection, have to go into them. But we would  
2 still have the right and we would go into them on responsive  
3 inspections.

4 For instance, the relay that Vic was talking about  
5 has had some problems. We would still be able to go into  
6 the future relay maker that didn't have Part 21 invoked in it  
7 in response to reports of problems. So the lower tier people  
8 would be carved out and there would be no need for planned  
9 inspections. I think it says it would decrease the requirement  
10 for resources that are not presently available.

11 COMMISSIONER BRADFORD: Does that run contrary to  
12 the GAO recommendations on our overall inspection effort?

13 MR. THORBURG: No sir, I don't think it does.

14 COMMISSIONER BRADFORD: Can you elaborate a little?

15 MR. THORBURG: Well, I don't believe in -- in the  
16 first place I don't believe GAO addressed the lower tier  
17 vendor, and they didn't really delve into the Part 21 aspect.

18 CHAIRMAN HENDRIE: Harry, didn't they say we ought  
19 to be more vigorous on construction inspection and on vendor  
20 inspection meaning those obvious nuclear -- suppliers, first  
21 tier?

22 MR. THORBURG: Yes, the ones that are doing nuclear  
23 work, I don't believe they really went to the sub-tier members.

24 COMMISSIONER AHEARNE: In a way I would say that the  
25 recommendation they are making would be more consistent in the

dor 16 1 sense that GAO's emphasis was on focusing inspection resources  
2 on a certain class of actions which are construction permits,  
3 operating licenses, the vendors who directly manufacture the  
4 material. And to take the inspectors away from things that  
5 were other than that.

6 COMMISSIONER BRADFORD: My next question was whether  
7 in fact we are putting much inspection effort into this area  
8 anyway?

9 MR. THORBURG: No.

10 COMMISSIONER BRADFORD: So what we are talking  
11 about is a hypothetical reshuffling.

12 MR. MINOGUE: Yes it is. It is also worth noting  
13 that the wording that gives you the authority to go into these  
14 sub-tier suppliers. Such authority as you have, is in the  
15 Act itself. It's not in Part 21.

16 MR. SHAPAR: I have to respond to that. It's in  
17 the Act itself, but a couple of points need to be made.

18 Number one, usually the Commission's regulatory  
19 authority, including it's inspection authority, is tied to  
20 people with licenses. And you are envisaging now a situation  
21 where the person would not be licensed. Indeed, D of the statute  
22 does say this: "The Commission is authorized to conduct such  
23 reasonable inspections and other enforcement activities as  
24 needed to assure compliance with the provision of this section."  
25 As stated, that's probably broad enough to get at these people



dor 17 1 who are not licensees.

2 But on the other hand it kind of flies against this  
3 traditional interpretation of where the Commission's regulatory  
4 and inspection authority is. It's probably good enough, but  
5 I think it's only fair to state it's not entirely free from  
6 doubt.

7 CHAIRMAN HENDRIE: But with regard to the main  
8 issue here, that's sort of a second one.

9 Other comments on the proposal at hand?

10 COMMISSIONER AHEARNE: Just let me ask one question.  
11 Bob, in your paper you have a phrase, this will result in  
12 less demand for the currently non-existent inspection resources.

13 (Laughter.)

14 Now are you trying to get across a second message?

15 MR. MINOGUE: No, not so much as recognizing the  
16 situation that the agency faces throughout. The job sometimes  
17 exceeds the resources to do it.

18 MR. THORBURG: To us it means we don't currently  
19 do preventative inspections in this area, we don't go to  
20 sub-tier vendors -- (inaudible) --

21 COMMISSIONER AHEARNE: So that is equivalent to  
22 saying it will remove a demand that is right now not being  
23 met.

24 MR. THORBURG: Right. We are doing responsive  
25 inspections.

dor 18

1 MR. MINOGUE: A better way to put what I think we  
2 would be driving at is the fact that given very limited  
3 resources you ought to make sure you use them where you get  
4 a high payoff in improving safety and not chasing after  
5 peripheral stuff.

6 COMMISSIONER BRADFORD: But since you are doing that  
7 anyway, that in itself is not why we would be making this  
8 change.

9 MR. MINOGUE: That's right.

10 COMMISSIONER BRADFORD: Whether we made the  
11 change or not, the inspection would still not be going to  
12 the lower tier --

13 MR. MINOGUE: That's right, we try to be very  
14 responsive, but one of the questions that came up when the  
15 Staff worked on this was implied and that was, would this  
16 limit our inspection authority or whatever the issue that  
17 Howard discussed a moment ago. That wasn't one of the things  
18 the Staff was concerned about.

19 CHAIRMAN HENDRIE: Could I propose -- does it seem  
20 all right to you, Peter?

21 COMMISSIONER BRADFORD: Yes.

22 CHAIRMAN HENDRIE: Could I propose to the Commission  
23 then, that we vote affirmatively on the following proposition:  
24 That we accept the wording recommended by the Staff for  
25 immediate implementation in Part 21, and that the various

dor 19 1 notices and statements of consideration as appropriate, and  
2 so on, reflect an invitation by the Commission for public  
3 comment on both this specific aspect of Part 21, and other  
4 aspects as people may deem it desirable. And that a sixty  
5 day comment period be attached to this.

6 COMMISSIONER AHEARNE: Agreed.

7 COMMISSIONER KENNEDY: Aye.

8 COMMISSIONER BRADFORD: Aye.

9 CHAIRMAN HENDRIE: All right. So ordered.

10 Before we close on this subject, I would like to  
11 make a comment about Part 21, Section 206 of the Act. In trying  
12 to make sure that these facilities that we regulate are  
13 properly and prudently and safely built and operated, we have  
14 a system with a variety of approaches to it. The quality  
15 assurance approach is one to specify quality components  
16 and test them and make sure they are manufactured and delivered  
17 and installed as specified.

18 Another approach to safety has to do with saying  
19 well that's well and good, but things can still happen. Where  
20 a safety function is necessary we will require redundancy so  
21 that one whole set of these great components can perhaps go  
22 awry and the safety function can still be fulfilled.

23 It seems to me that the provisions of the Energy  
24 Reorganization Act in Section 206 add an additional attempt  
25 to gather all possible resources in this direction in, and they



dor 20 1 simply say, look people who are aware of these components,  
2 who manufacture them, they have knowledge that the  
3 operators of the plant would have, will know that something is  
4 wrong. Please come and tell us so we can fix it and keep  
5 these facilities as safe as possible. And then to put a little  
6 teeth in it it says, and furthermore if you are a responsible  
7 officer of the company and you know something we ought to know  
8 and you don't tell us why it's worth \$5,000 per item, or  
9 whatever.

10 Now that seems to me not an unreasonable proposition  
11 for the Congress to enact as part of a multiple layered  
12 approach to the safety of these facilities. But I think also  
13 the words substantial safety hazards are used a couple of  
14 times in that law. And I don't think the intent of the  
15 Congress was for the Commission to implement a regulation  
16 which reaches out into practically every commercial activity  
17 in the nation and grab every citizen by the throat with Part 21,  
18 damn it.

19 We have this multiple tiers, and the law says  
20 substantial safety hazard. And I think keeping in mind that  
21 general thrust of the Act, and not trying to carry it down  
22 to every last salesman in the United States would be helpful  
23 both in interpreting it on the industry side, and in implementing  
24 it on the Staff side.

25 COMMISSIONER BRADFORD: You've given me a chance

dor 21 1 to think of one more question.

2 (Laughter.)

3 CHAIRMAN HENDRIE: Good.

4 COMMISSIONER BRADFORD: Have we, in fact, had any  
5 actions under this section? Has anyone reported anything?

6 MR. CAMPBELL: Yes, sir.

7 COMMISSIONER BRADFORD: What sorts of things?

8 MR. CAMPBELL: We have had 70 some, and I think I&E  
9 is prepared to answer any information on that. How many  
10 requests have we had?

11 MR. REINMUTH: We have had 75 reports todate,  
12 roughly 60 percent of them are in construction vendor  
13 area. 40 percent in the operating facilities. The rest in  
14 safe guards material area.

15 We have had no fines to date.

16 COMMISSIONER BRADFORD: How many of those reports  
17 have come from areas that would be -- that would not have been  
18 reported if the new regulation had been in force?

19 MR. REINMUTH: Well, I can speak only for those  
20 that come in on construction provision. Those are the ones  
21 I've seen. About half of them have come from licensees, and  
22 about the other half from vendors directly.

23 MR. SHAPAR: Yes, but that doesn't answer it.

24 COMMISSIONER BRADFORD: That doesn't quite give me  
25 the same cut I was looking for.

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MR. PERANICH: I sort of anticipated this question last night. If I understood it correctly what you are asking, of the reports we have received which are those that would fall under the category of commercial grade item which we have received? Okay, we have a computer run here and a review of that indicates that we have 15 reports which will fit the category of commercial grade items. Of these 8 were supplied by -- or submitted by vendors, 7 by licensees. Of the 8 submitted by vendors, 7 of those would be classified as major nuclear suppliers that would be dedicating the use of a commercial grade item for a basic component. One, only one is from a nut and bolt type manufacturer which would be the type we would hope to capture from the supplier or the purchaser of the line.

15

CHAIRMAN HENDRIE: Do you have any -- does the readout give any indication of what the merit of that one was?

17

MR. PERANICH: Yes, it was failure to meet an ANSI spec, tensile spec for a bolt.

19

CHAIRMAN HENDRIE: We'd expect to pick that up at the dedicated supplier level.

21

MR. PERANICH: We would expect that the purchaser would review his purchase documentation with respect to the strength analyses to have picked that up.

24

COMMISSIONER BRADFORD: Had he in fact done so, or would it have been too early to tell?

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MR. PERANICH: It would have been too early --

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actually the way I understand it occurred, it was brought to

3

the attention of the purchaser who said it could be reportable

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under Part 21, and the supplier elected to report it.

5

In the system that we have --

6

COMMISSIONER KENNEDY: In any event, the purchaser

7

in such a case would have been obligated to report it.

8

MR. PERANICH: Once the purchaser became aware, he

9

could not say I think we should report it. He would have to

10

report it.

11

MR. SHAPAR: But if it had been reported by the

12

nut manufacturer, the statute says the subsequent guy doesn't

13

have to report it if he has factual knowledge that the division

14

knows about it.

15

COMMISSIONER BRADFORD: So am I correct in under-

16

standing the two of you to say we have 70 some reports only

17

one of which would be eliminated by the change?

18

MR. PERANICH: Could be, we think would be captured

19

by the higher --

20

COMMISSIONER BRADFORD: But it would not be reported

21

by the person who reported it.

22

MR. PERANICH: We have 1 out of 75.

23

MR. KELLEY: Can I add a comment to this for

24

information? Since this regulation has been in place a year

25

plus, I have had a lot of requests for opinion of the

dor 24 1 General Counsel on the meaning of this regulation. And I  
2 just want you to know I am not answering my mail in that  
3 regard. The Commission's regulations talked of General Counsel's  
4 opinions, and the beauty of the General Counsel's opinion  
5 is that it -- (Inaudible.)

6 CHAIRMAN HENDRIE: It does, or it doesn't?

7 MR. KELLEY: Yes, it does.

8 CHAIRMAN HENDRIE: Good heavens.

9 MR. SHAPAR: Only as to law.

10 CHAIRMAN HENDRIE: Be careful what you say.

11 MR. KELLEY: What I have done uniformly is send  
12 it out to ELD that's been developing, working with reg guards --

13 MR. SHAPAR: We'll say anything but it doesn't bind  
14 you.

15 MR. KELLEY: But I am getting to a point now where,  
16 the NUREG document came out some time ago, right? And my  
17 more recent mail is in the form of appeals from the NUREG  
18 documents still asking for General Counsel's opinions and I  
19 just feel that these letters I answer, and I've answered  
20 a few, and I've said this is a very fact dependent complicated  
21 regulation that needs some working up. We don't think it's  
22 an appropriate way -- and the General Counsel's opinion we  
23 don't see as an appropriate answer. I'm not saying we'd  
24 never get a request that wouldn't be appropriate, but I have  
25 been treating them that way thus far for that reason. And I

dor 25 1 think it's the way to back and fill with this kind of complicated  
2 scheme is the way it's been done here and we should continue  
3 to do that.

4 COMMISSIONER BRADFORD: I have a generic question,  
5 John, I think we should ask at the end of each meeting whether  
6 there is anyone out there who thought of questions the  
7 Commission should have asked.

8 (Laughter.)

9 CHAIRMAN HENDRIE: Only if they have answers.

10 All right. Nothing further? Thank you very much,  
11 it's a useful morning. The Commission will meet immediately  
12 in the Conference Room.

13 (Whereupon, on 11:30 a.m. the hearing was adjourned.)  
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