Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 34, 35, 36, 39, 40, 50, 70, 72, and 76

[Docket No. PRM–30–63]

Natural Resources Defense Council; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Natural Resources Defense Council (PRM–30–63). The petitioner requested that the Commission's regulations be amended to require that no license be issued to, or retained by, any individual or organization whose principal owner, officer, or senior manager: (1) Fails to report engaging in, or having knowledge or evidence of, bribery of, or extortion by, Federal, State, or other regulatory officials; or, (2) has acted in any manner that flagrantly undermines the integrity of the regulatory process of NRC or that of an Agreement State. NRC is denying the petition because the petitioner has neither identified a statutory requirement for promulgating the regulation nor identified a need for such regulation since NRC already has the authority to take the actions requested by the petitioner, and because the NRC believes that imposition of these types of actions should be considered on a case-by-case basis.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. These same documents are also available on the NRC's rulemaking website at *http://ruleforum.llnl.gov.* For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: John W. Lubinski, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Telephone: (301) 415–2740.

SUPPLEMENTARY INFORMATION:

The Petition

On June 30, 2000 (65 FR 40548), NRC published a notice of receipt of a petition for rulemaking filed by the Natural Resources Defense Council. The petitioner requested that no license be issued to, or retained by, any individual or organization whose principal owner, officer, or senior manager: (1) Fails to report engaging in, or having knowledge or evidence of, bribery of, or extortion by, Federal, State, or other regulatory officials; or, (2) has acted in any manner that flagrantly undermines the integrity of the regulatory process of NRC or that of an Agreement State.

Public Comments on the Petition

The notice of receipt of petition for rulemaking invited interested persons to submit comments. NRC received two comment letters: one from a law firm and one from an organization of the nuclear energy and technologies industry. The comments focused on the main elements of the petition. Both commenters recommended that NRC deny the petition. The following comments were provided and were reviewed and considered in NRC's decision:

1. Both commenters stated that NRC already has the authority to consider character and integrity of applicants and licensees when making licensing decisions. The commenters included citations from the Atomic Energy Act (AEA) and past statements by the Commission to support their position. NRC agrees that it currently has such authority and has used such authority in making licensing decisions or taking enforcement actions based on the character and integrity of an applicant or licensee.

2. One commenter stated that the petition does not identify a regulatory ''gap'' that needs to be filled. The commenter goes on to state that in such cases NRC has routinely denied rulemaking petitions. NRC agrees that the petitioner did not identify a regulatory ''gap,'' and does not believe that such a ''gap'' exists. As already discussed, NRC has the authority to take the actions identified by the petitioner.

3. Both commenters stated that NRC has the essential ability and flexibility to consider all relevant circumstances, both positive and negative, in making enforcement decisions. The commenters believe that NRC should continue to make enforcement decisions on a case-by-case basis using appropriate discretion and judgment. One of the commenters goes on to state that singling out certain specific acts (which are neither exhaustive nor comprehensive of actions relevant for determining character) that trigger denial or revocation of a license without regard to the particular circumstances would be inconsistent with past Commission policy. NRC agrees with the commenters that making such a change would narrow the Commission's discretion by eliminating its ability to make character determinations on the basis of all relevant circumstances.

4. Both commenters stated that certain language in the petition, specifically, ''flagrantly undermining the integrity of the regulatory process of NRC or that of an Agreement State,'' is too vague. The commenters believe this wording would raise serious questions regarding adequate notice and due process and would not withstand judicial scrutiny. NRC does not agree with the commenters on this issue. Specifically, the Commission derives its authority to evaluate character and integrity from the AEA. Promulgation of specific rule language would further clarify the criteria used in performing such evaluations. Therefore, while NRC believes that specific rule language on this issue is not warranted, NRC does not agree with the commenters that the proposal by the petitioner should be denied based on the fact that the language is too vague.

5. Both commenters stated that the proposed regulation does not take into account NRC actions against licensees versus individuals. Specifically, the proposed regulation would require denial or revocation of a license based on the acts of one individual. Instead, the commenters believe that NRC should continue to consider on a case-by-case basis whether the acts of an individual should be imputed to the licensee. NRC agrees that the petitioner has not provided sufficient justification

to change the NRC's current practice of considering on a case-by-case basis whether the acts of an individual should be imputed to the licensee.

6. One commenter stated that any attempt to apply such a regulation based on past conduct of a licensee, such as acts prior to promulgation of the regulation, would violate the prohibition against retroactive rulemaking. NRC does not agree that approval of the petition would represent retroactive rulemaking. Specifically, as already discussed, NRC already has authority to consider character and integrity of applicants and licensees when making licensing decisions. As such, evaluations of character and integrity are not limited to acts that occur after promulgation of a rule or requirement that provides greater detail with respect to the matter of character and integrity. However, as part of using discretion and judgement in determining appropriate actions, NRC may consider the age of the actions in question.

Reasons for Denial

NRC is denying the petition for the following reasons:

1. The petitioner has not identified a statutory requirement for promulgating the regulation requested in the petition. In addition, the petitioner did not identify a need for such regulation nor a gap in the current regulatory process. Specifically, NRC already has authority under the AEA to deny or revoke a license, or ban an individual from licensed activities, if adequate protection of public health and safety is not provided. NRC currently considers the integrity and character of individuals in determining adequate protection. Section 182a of the AEA states, in part, that license applications shall specifically state the information that NRC determines is necessary to evaluate the character of the applicant. The information must enable NRC to find that the licensed activities will provide adequate protection of health and safety. Further, after filing the original application and before expiration of a license, NRC may require additional information in order to determine whether the license should be modified or revoked. In considering the integrity and character of an applicant or licensee, NRC would consider engaging in bribery or extortion or acts that undermine the integrity of the regulatory process. Therefore, if NRC determines that it does not have reasonable assurance of adequate protection of health and safety based upon, in part, the character of an applicant or licensee, NRC may deny or revoke a license. Promulgation of specific rule language is, therefore, not necessary.

2. NRC does not agree with the petitioner that the regulations should specify the actions that NRC would take against an applicant or licensee that has engaged in bribery of, or extortion by, any Federal, State or other regulator or has acted in any manner that flagrantly undermines the integrity of the regulatory process of NRC or that of an Agreement State. Specifically, NRC believes that all enforcement actions, including those involving situations identified by the petitioner, should be reviewed on a case-by-case basis and dispositioned according to the merits of the specific case using appropriate discretion and judgment. In addition, the current Enforcement Policy, NUREG–1600, states that in deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee based on the willful acts of an individual, NRC recognizes that judgments will have to be made on a case-by-case basis. The policy includes factors that will be considered in making such decisions. NRC does not believe that the petitioner has provided sufficient information nor justification for NRC to consider changing its practice of deciding enforcement actions based on case-by-case consideration of these factors.

For these reasons, NRC does not believe that the rulemaking requested by the Petitioner should be promulgated and; therefore, NRC denies the petition.

Dated at Rockville, Maryland, this 14th day of May, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–13493 Filed 5–29–01; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG52

Decommissioning Trust Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations relating to decommissioning trust provisions for nuclear power plants. The NRC proposes to require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. Until recently, direct NRC oversight of the terms and conditions of the decommissioning trusts was not necessary because rate regulators typically exercised such authority. With deregulation, this oversight may cease and the NRC may need to take a more active oversight role.

DATES: Submit comments on the proposed rule and accompanying regulatory guide August 13, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN. : Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to this rulemaking, including comments received, the draft regulatory analysis and the draft Regulatory Guide, DG–1106, ''Proposed Revision 1 of Regulatory Guide 1.159, Assuring the Availability of Funds for Decommissioning Nuclear Reactors,'' may be examined, and/or copied for a fee, at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff