

# 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 Part 50

[Docket No. PRM-50-78]

#### Robert H. Leyse; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Robert H. Leyse. The petition has been docketed by the NRC and has been assigned Docket No. PRM-50-78. The petitioner is requesting that the NRC regulations that govern domestic licensing of production and utilization facilities be amended to address the impact of fouling on the performance of heat transfer surfaces throughout licensed nuclear power plants. The petitioner believes that the fouling of heat transfer surfaces is not adequately considered in the licensing and compliance inspections, testing programs, and computer codes for nuclear power facilities.

**DATES:** Submit comments by December 16, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (<http://ruleforum.llnl.gov>). At this site, you may view the petition for rulemaking, this **Federal Register** notice of receipt, and any comments received by the NRC

in response to this notice of receipt. Additionally, you may 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](mailto:CAG@nrc.gov)).

For a copy of the petition, write to Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Documents related to this action are available for public inspection at the NRC Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-7163 or Toll-Free: 1-800-368-5642 or E-mail: [MTL@NRC.Gov](mailto:MTL@NRC.Gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Nuclear Regulatory Commission received a petition for rulemaking dated September 2, 2002, submitted by Robert H. Leyse (petitioner). The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM-52-78. The NRC is soliciting public comment on the petition for rulemaking.

##### The Petitioner's Request

The petitioner is requesting that the regulations in 10 CFR part 50 be amended to address the impact of fouling on the performance of heat transfer surfaces throughout nuclear power plants. Specifically, the petitioner requested that the NRC amend 10 CFR part 50 to include fouling considerations in NRC-funded test programs such as the Rod Bundle Heat Transfer (RHBT) at Penn State University and the RELAP and TRAC series NRC computer codes. The petitioner believes that the fouling of heat transfer surfaces is not adequately considered in the licensing and compliance inspections of nuclear power plants.

#### Justification for the Petition

The petitioner states that the NRC must produce a complete inventory of all significant heat transfer surfaces because regulations are needed to address the impact of fouling on the performance of heat transfer surfaces in all licensed nuclear power plants. The petitioner asserts that NRC regulations must require reporting of the performance of these surfaces including records of degradation, cleaning procedures, and effectiveness, and must address mechanical degradation of heat transfer assemblies, especially in fuel assemblies. The petitioner also states that the amended regulations must require detailed reporting that must be publicly available. The petitioner believes that the current regulations do not address the significance of severe fouling of nuclear fuel elements and that NRC licensing bases and technical specifications do not limit the amount of fouling of fuel elements.

The petitioner cites an Advisory Committee on Reactor Safeguards (ACRS) Subcommittee meeting transcript dated May 31, 2002, stating that the fouling of fuel elements in some cases is sufficient to induce significant oxidation of the fuel cladding that has led to "a debate over (whether) the 17 percent includes the prior oxidation or it's just the oxidation during the ramp-up." Another ACRS Subcommittee transcript dated April 24, 1998, led the petitioner to believe that the fouling issue is not being adequately considered, stating that after axial offset anomalies were traced to fouling of nuclear fuel elements, the ACRS was told this phenomena is "a(n) annoyance. They affect economics, but they are not safety issues."

The petitioner states that severe fouling of nuclear fuel elements also leads to axial growth of the fuel rods beyond design limits because the operating temperatures of fuel rods become greater than allowed for in design. According to the petitioner, the fuel rods may expand sufficiently along their length to become restrained from further axial growth by the fuel assembly end fittings causing the rods to bow and make contact with adjacent rods and control rod guide tubes.

The petitioner cites another instance when one nuclear power plant continued to operate at power, the need for repeated cleaning of an air cooling

heat exchanger was not recognized as a key indicator of a substantial leak in the primary reactor system. Because this plant's operation remained within the technical specifications, there was no basis for plant operators to perform investigations. The petitioner believes this instance calls for the regulations to address the need for investigating the grossly off-normal performance of this heat exchange equipment. The petitioner states that in several instances, the fouling of steam generator tubes has reduced heat transfer effectiveness enough to force operation at reduced secondary side pressures in order to maintain heat transfer rates. The petitioner believes that this fouling is not only an operating annoyance, but will likely impact safety issues.

The petitioner has concluded that fouling of main condenser heat transfer surfaces has led to degradation of heat transfer effectiveness and that these fouling deposits have occasionally been released into the coolant stream, contributing to the fouling of fuel elements.

The petitioner also has concerns with test programs and states that during the past several decades, the NRC has funded over one billion dollars of heat transfer test programs that have not included any allowance for the fouling of heat transfer surfaces that occurs during operation of nuclear power plants. The petitioner states that these test programs must be thoroughly studied and that allowances must be made for a range of fouling of the heat transfer surfaces. The petitioner believes it is very likely that it will not be possible to produce reliable allowances for a range of degrees of fouling and states that the results of the prior test programs such as FLECHT, LOFT, Semiscale, and others must not be applied to the production of computer codes for reactor heat transfer analyses.

The petitioner also notes that the NRC is currently spending millions of dollars on heat transfer testing at facilities such as the RHBT at Penn State University and believes that "these programs must be realigned to cover the cases of several degrees of fouling."

The petitioner notes that the NRC has also funded several hundred million dollars of computer codes related to heat transfer processes in nuclear power reactors. The petitioner states that these codes (TRAC, RELAP, and others) have not considered the effects of fouling on heat transfer surfaces at nuclear power facilities and must not be applied to the licensing of nuclear power plants until "reliable allowances for a range of degrees of fouling are incorporated in the codes."

The petitioner states that amended regulations will illustrate if conditions similar to those already reported in certain Licensee Event Reports (LERs) will constitute license violations and cites LER 50-458/99-016-00 as a possible example.

#### **The Petitioner's Suggested Codified Text**

The petitioner did not provide proposed changes to codified text in presenting issues in the petition that address the impact of fouling on the performance of heat transfer surfaces throughout licensed nuclear power plants.

#### **The Petitioner's Conclusions**

The petitioner has concluded that the increased attention to detail in plant design, analysis, and operations that will be effected by the amended regulations will enhance operating effectiveness and safety, discourage incomplete and misleading reporting to regulatory authorities, and reduce opportunities for sabotage by insiders. The petitioner has also concluded that the increased reporting requirements with respect to fouling of heat transfer surfaces at nuclear power facilities will provide improved information to professional risk analysts who advise financial management organizations, to individual investors, and to State agencies that oversee the sale and acquisition of nuclear power plants by utility holding companies that operate within their jurisdiction.

Dated at Rockville, Maryland, this 24th day of October, 2002.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 02-27700 Filed 10-30-02; 8:45 am]

**BILLING CODE 7590-01-P**

## **DEPARTMENT OF JUSTICE**

### **28 CFR Part 16**

**[AAG/A Order No. 296-2002]**

#### **Privacy Act of 1974; Implementation**

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice, Office of the Pardon Attorney (OPA), proposes to exempt the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA-001) system of records from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5) of the Privacy Act, 5 U.S.C. 552a. Information in this

system relates to the investigation and evaluation of applicants for executive clemency and case-related correspondence regarding such applicants and the clemency process. The exemptions are necessary to avoid interference with clemency investigations and decision-making, when such interference could impair the Department of Justice's ability to provide candid recommendations to the President for his ultimate decisions on clemency matters, and to prevent unwarranted invasions of the personal privacy of third parties.

**DATES:** Submit any comments by December 2, 2002.

**ADDRESSES:** Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

#### **FOR FURTHER INFORMATION CONTACT:**

Mary Cahill, (202) 307-1823.

**SUPPLEMENTARY INFORMATION:** In the notice section of today's **Federal Register**, the Department of Justice provides a description of the Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA-001).

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant impact on a substantial number of small entities."

#### **List of Subjects in Part 16**

Administrative practices and procedures, Courts, Freedom of Information, Sunshine Act, and Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a, and delegated to me by Attorney General Order No. 793-78, it is proposed to delete the current language of 28 CFR 16.79 and substitute the following:

1. The authority citation for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.79 is revised to read as follows:

#### **§ 16.79 Exemption of Pardon Attorney Systems.**

(a) The following system of records is exempt from 5 U.S.C. 552a, subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), and (e)(5): Executive Clemency Case Files/Executive Clemency Tracking System (JUSTICE/OPA-001). These exemptions apply only to the extent that