



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

April 10, 1981

The Honorable George E. Brown
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Brown:

Chairman Hendrie has asked me to respond to your letter of March 19, 1981 and its enclosed correspondence concerning the rights of intervenors in NRC proceedings, specifically their rights to have transcripts and other documents provided to them free of charge. In response to your request as to "any new developments concerning the NRC's posture on this question," I can only reiterate what was stated in Mr. Carstens' letter of February 23, 1981 (which you forwarded to us with your own letter). The NRC is prohibited by Section 502 of the 1981 Energy and Water Development Appropriation Act, P.L. 96-367, from "pay[ing] the expenses of, or otherwise compensat[ing], parties intervening in regulatory or adjudicatory proceedings...." The Comptroller General has interpreted this section to prohibit the provision of free transcripts to intervenors in NRC proceedings (E-200585, December 3, 1980). Consequently, the Commission has suspended its program of procedural assistance to intervenors (please see enclosed Federal Register Notice, 46 F.R. 13681, February 24, 1981). The Commission is currently seeking the Comptroller General's opinion as to the legality of providing transcripts to all parties in a proceeding. However, unless the Comptroller General indicates that this proposal would be lawful, or unless Congress removes the restriction on the NRC's use of its appropriations to aid intervenors, NRC will continue its present policy against providing procedural assistance to intervenors.

If I can be of any further assistance, please do not hesitate to call on me (202/634-3288).

Sincerely,

A handwritten signature in dark ink, appearing to read "L. Bickwit, Jr.", written in a cursive style.

Leonard Bickwit, Jr.
General Counsel

Enclosure: Federal Register Notice

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Rules and Regulations

Federal Register

Vol. 46, No. 36

Tuesday, February 24, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Domestic Licensing Proceedings; Procedural Assistance Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule; Suspension of certain provisions.

SUMMARY: The Commission suspends immediately the effectiveness of 10 CFR 2.712(f) and 2.750(c), concerning procedural assistance to non-applicant parties in domestic licensing proceedings. This suspension is based on a December 3, 1980, decision of the Comptroller General (No. B-200585) that found unlawful the use of funds appropriated under Pub. L. 96-367 (FY 1981 Appropriations Act) for the provision of free transcripts to and copying and service of written submissions of non-applicant parties in these proceedings. The Commission may consider a revision of its transcript program at a future date.

EFFECTIVE DATE: February 24, 1981.

FOR FURTHER INFORMATION CONTACT: Martha A. Torgow, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 202/534-1465.

SUPPLEMENTARY INFORMATION: On July 25, 1980, the Commission published a final rule to implement a pilot program of procedural assistance in domestic licensing proceedings, except for antitrust proceedings, to parties other than the applicant by (1) providing a transcript without charge and (2) copying and serving certain written submissions on request. 10 CFR 2.750(c), 2.712(f), 45 FR 49335. In addition, the NRC reduced the number of copies required to be filed by any party with

the Commission from 20 to 2. 10 CFR 2.708(d)(2), *supra*. The Commission had begun to implement that program in its licensing proceedings.

The Comptroller General was requested to review this program and determine whether it was lawful under Section 502 of the Energy and Water Development Appropriations Act for FY 1981, Pub. L. 96-367. That section states that FY 1981 funds may not "be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act." On December 3, 1980, the Comptroller General concluded that the first two elements of the program (free transcripts and free copying and service for non-applicant parties) could not be funded from moneys available under that Act, but that the third element (reduction of copies for all parties) could. Opinion No. B-200585. The Comptroller General reasoned that provision of transcripts and free copying and service were litigation expenses that would inevitably have been paid by the non-applicant party and that the assistance program transferred the expense to the NRC to be paid out of appropriated funds. However, a reduction in the number of copies of papers required to be filed did not compensate intervening parties, but merely eliminated a cost for all parties. On December 4, Chairman Ahearn ordered an immediate suspension of the NRC's procedural assistance program on transcripts and copying and service, pending further direction from the Commission.

This notice announces the formal suspension of the transcript and copying and service portions of the program. 10 CFR 2.750(c) and 2.712(f). Because implementation of these portions of the program through appropriations under the FY 1981 Appropriations Act has been found unlawful by the Comptroller General and thus would not be in the public interest, good cause exists for making this suspension effective without prior notice and comment and upon publication. The Commission may at some future time revise its program of free transcripts and will consider any comments filed on the suspension and proposals for future action which are filed with the Secretary of the Commission within 30 days of publication of this notice.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 2, are published as a document subject to codification.

§ 2.712 [Amended]

1. Section 2.712(f) of 10 CFR Part 2, concerning free copying and service, is amended by revising footnote 1 at the end thereof to read as follows:

'This paragraph is suspended until further action of the Commission.'

§ 2.750 [Amended]

2. Section 2.750(c) of 10 CFR Part 2, concerning free transcripts, is amended by revising footnote 1 at the end thereof to read as follows:

'This paragraph is suspended until further action of the Commission.'

(Sec. 161p, as amended, Pub. L. 93-703, 68 Stat. 948 (42 U.S.C. 2201p); Sec. 201 as amended, Pub. L. 93-435, 88 Stat. 1243 (42 U.S.C. 5641))

Dated at Washington, D.C., this 19th day of February 1981.

For the Commission,

Samuel J. Chilk,

Secretary of the Commission.

(FR Doc. 81-427 Filed 2-23-81; 8:45 am)

BILLING CODE 7590-01-M

10 CFR Parts 11, 50, and 70

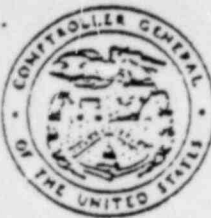
Change of Effective Date for Application, Recordkeeping, and Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule; Extension of Effective Date.

SUMMARY: The Nuclear Regulatory Commission is extending from February 4, 1981 to March 21, 1981, the effective date for the application, recordkeeping, and reporting requirements contained in a final rule establishing "Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material", 10 CFR Part 11, and conforming amendments to 10 CFR Parts 50 and 70, which was published as Federal Register Document 80-37442 appearing at page 76955 on November 21, 1980. This extension of the effective

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548.

FILE: B-200585

DATE: May 11, 1981

MATTER OF: Free transcripts of adjudicatory proceedings—
Nuclear Regulatory Commission

DIGEST: Nuclear Regulatory Commission may use funds appropriated by Energy and Water Development Appropriation Act, 1981, to implement proposal to provide free hearing transcripts to all parties to Commission proceedings. Proposal is designed to increase efficiency of Commission and expedite handling of license applications. Appropriation Act prohibition on using appropriated funds to pay expenses of intervenors was not intended to prohibit expenditure, no matter how necessary or desirable to Commission, simply because it incidentally benefits intervenors.

The General Counsel of the Nuclear Regulatory Commission has asked for our decision on the legality of a proposed Commission plan to provide free transcripts of hearings to all parties to Commission adjudicatory proceedings, including intervenors. In his letter, the General Counsel refers to our letter dated December 3, 1980 (B-200585), to the former chairman, Subcommittee on Energy Research and Production, Committee on Science and Technology, House of Representatives, in which we concluded that the Commission could not lawfully use its fiscal year 1981 appropriation to provide free transcripts and other services to intervenors in its proceedings. The General Counsel asserts that the purpose of the new Commission proposal is to make the hearing process as efficient and timely as possible and thus eliminate unnecessary delays in the Commission's issuance of licenses.

For the reasons indicated below, we conclude that the Nuclear Regulatory Commission may lawfully implement its proposal to provide free transcripts to all participants in its proceedings even though the proposal may incidentally benefit intervenors.

THE STATUTE

Funds for the Commission's operations for this fiscal year were appropriated by the Energy and Water Development Appropriation Act, 1981, Pub. L. No. 96-367, 94 Stat 1331. Section 502 of the Act provides:

"None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in this Act." 94 Stat 1345.

THE DECEMBER OPINION

The subject of our December 3 letter was the Commission's announced procedural cost reduction program. This program was designed to ease the economic burden on intervenors in Commission proceedings by providing free transcripts and by copying and serving at no cost certain documents filed by intervenors. In our letter we concluded that, because the program was intended to provide assistance to intervenors, and because its effect would be to "pay the expenses" of intervenors, the Commission could not use its fiscal year 1981 appropriation to implement the program without violating the statutory prohibition quoted above.

THE COMMISSION PROPOSAL

The Commission now proposes to provide free transcripts of hearings to any party that requests them. The General Counsel indicates that the purpose of the proposal is to expedite Commission proceedings and the issuance of licenses by the Commission. In the words of the General Counsel,

After examining the issue, the Commission is convinced that its interest and that of the public would be best served by providing transcripts to all participants in our licensing proceedings, and that such a program is needed to make the process function effectively.

With his letter, the General Counsel enclosed a memorandum from the Chairman of the Atomic Safety and Licensing Board Panel which conducts hearings on utilities' applications for nuclear licenses. In the memorandum, the Chairman indicates "that the quintessential purpose of furnishing transcripts and other documents to any party is to expedite licensing proceedings." In the Chairman's opinion, denying transcripts to any party can only result in delays both in the hearing itself and in the licensing board's preparation of its initial decision. Providing transcripts to all parties is thus "essential to expediting licensing proceedings and insuring complete Initial Decisions." The Chairman concludes,

"In sum, the Licensing Panel feels strongly that copies of transcripts and other evidence of record to intervenor and other parties have the following benefits:

"1. They expedite hearings thus saving much more money than the cost of the transcripts;

"2. They aid in establishing a complete and accurate record by supporting cross-examination and identifying the need for, and extent of, rebuttal evidence;

"3. They aid in prompt initial decisions following the hearing because unless the parties can cite the record, the board must search the record, a time consuming, and inefficient expenditure of board time; and

"4. The need for transcripts is so intertwined with the statutorily mandated opportunity for proposed findings and conclusions that the denial of transcripts could result in a reversal of a long and complex NRC proceeding on due process grounds. The cost to the public and industry if this should happen is obviously enormous.

* * * * *

"In short, what is at issue here is not a cost reduction program, but rather a program to aid licensing boards in their mission of insuring that their initial decision adequately protects the public health, safety, and environment."
(Emphasis in original.)

.Based on the General Counsel's letter and the Chairman's memorandum, it is our opinion that the purpose of the Commission's proposal to provide free transcripts to all parties is to expedite and improve the nuclear licensing procedure. Any benefit which will accrue to intervenors because of the implementation of the proposal will be incidental and not the motivating factor in the Commission adopting the proposal.

CONCLUSION

The Commission's fiscal year 1981 appropriation act, quoted above, bars the expenditure of funds appropriated by the act "to pay the expenses of, or otherwise compensate" intervenors in the Commission's proceedings. In our opinion, the intent of this provision was to preclude the Commission from implementing any program which was intended to and had the principal effect of paying the adjudicatory expenses of intervenors as a special class. The Commission's procedural cost reduction program which we found unlawful in our December opinion in fact benefited intervenors to the exclusion of others.

The Commission's new proposal is designed to increase the efficiency of its own operations and to expedite the handling of license applications. It will provide free transcripts not only to intervenors but to all parties to Commission proceedings. The Commission has decided that the implementation of this proposal will facilitate its operations, and we find no basis upon which to object to the Commission's determination that funds made available to it are reasonably necessary for such purpose. We cannot conclude that this proposal will violate the statutory prohibition simply because it, incidentally, eases the cost burden on intervenors. Cf. B-92288, February 19, 1976. Therefore, in our opinion, the Commission may lawfully use its fiscal year 1981 funds to implement the proposal.

For the

Harry R. Van Cleave
Acting Comptroller General
of the United States