

R-2914

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DFRoss
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GAARlotto
KGSteyer
FPCardile

NOV 26 1985

MEMORANDUM FOR: William J. Dircks
Executive Director for Operations

FROM: Robert B. Minogue, Director
Office of Nuclear Regulatory Research

SUBJECT: CONTROL OF NRC RULEMAKING: RES REVIEW OF
NEW PROPOSED RES-SPONSORED RULEMAKING

Based on our review of the new proposed RES-sponsored rulemaking, "Notification of NRC of Cases of Bankruptcy Filing," RES recommends that NRC should begin this specific rulemaking. This recommendation in draft form has been coordinated with the Office of Nuclear Material Safety and Safeguards.

This proposed rulemaking would require 10 CFR 30, 40, 61, 70, and 72 licensees to notify the NRC in the event of the commencement of a bankruptcy proceeding involving the licensee. There is no action required of a licensee by these amendments unless and until a bankruptcy petition is filed.

The basis for our recommendation is as follows:

- o Proceeding with rulemaking will result in NRC having timely knowledge of significant financial problems being experienced by materials licensees, specifically licensees involved in bankruptcy proceedings who may not have the resources for proper handling and securing of licensed material, so that NRC can take necessary actions to assure that the health and safety of the public is protected. Cases have occurred in which materials licensees filed for bankruptcy, abandoning property and licensed material, and NRC has not generally been aware that this happened. Among those licensees whose financial situation has jeopardized cleanup are included the J. C. Haynes Co., the Pesses Co., Luminous Processes, Inc., and Allied Technology, Inc.
- o Proceeding with rulemaking will enable NRC to be better aware of potential licensee problems in handling, securing, and disposing of licensed materials resulting from severe economic conditions and thus should result in reduction in NRC resources involved in such activities as enforcement actions and interface with a concerned public regarding contaminated sites.

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PDR PR
30-51FR22531 PDR

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NOV 26 1985

- o The impact of this rulemaking on industry is negligible since the United States Code already contains requirements that persons notify creditors of bankruptcy; thus this rule only consists of one additional notification, and that is simply a notification of NRC by mail at the time of bankruptcy filing. In addition, as noted above, the net impact on the NRC should be a reduction in resources.
- o This action is consistent with previous Commission actions as contained in proposed amendments to 10 CFR Parts 30, 40, 70, and 72 on decommissioning funding and in existing requirements in 10 CFR 61 on closure of low-level waste sites. This action was requested in a memorandum from John G. Davis, Director, NMSS, to R. B. Minogue, Director, RES.

The complete RES review package has been sent to OEDO (Attention: DEDROGR) and to the Director, NMSS.

Original signed by:
ROBERT B. MINOGUE

Robert B. Minogue, Director
Office of Nuclear Regulatory Research

FOR PREVIOUS CONCURRENCES SEE ATTACHED

OFFICE	RES:CEBR	RES:CEBR	RES:DET	CHMM:RIRB	RES:DO	RES:DO	
SURNAME	FPCardille:bh	KGSteyer	GAArlotto	FPBillespie	DFRoss	RBMinogue	
DATE	10/28/85	10/29/85	10/31/85	11/20/85	11/24/85	11/25/85	

RES REVIEW PACKAGE

RES INDEPENDENT REVIEW BOARD

VOTING SHEET

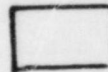
TO: F. P. GILLESPIE, CHAIRMAN, RIRB

FROM: K. R. Goller, Member, RIRB

TITLE OF RULEMAKING: NOTIFICATION OF NRC OF CASE OF BANKRUPTCY FILING



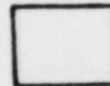
AGREE WITH RECOMMENDATIONS
IN RES RULEMAKING REVIEW
PACKAGE



REQUEST RIRB
MEETING.



MODIFY RECOMMENDATIONS IN
RES RULEMAKING REVIEW
PACKAGE AS INDICATED BELOW



NOT PARTICIPATING.

COMMENTS AND SUGGESTIONS:

Karl R. Goller

K. R. Goller
MEMBER, RIRB

11/7/85

DATE

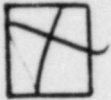
RES INDEPENDENT REVIEW BOARD

VOTING SHEET

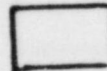
TO: RIRB

FROM: F. P. Gillespie

TITLE OF RULEMAKING: NOTIFICATION OF NRC OF CASE OF BANKRUPTCY FILING



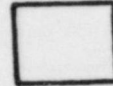
AGREE WITH RECOMMENDATIONS
IN RES RULEMAKING REVIEW
PACKAGE



REQUEST RIRB
MEETING.



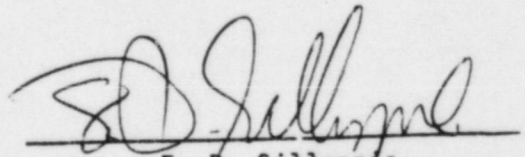
MODIFY RECOMMENDATIONS IN
RES RULEMAKING REVIEW
PACKAGE AS INDICATED BELOW



NOT PARTICIPATING.

COMMENTS AND SUGGESTIONS:

One minor point for the letter - give specific
examples of the problem and not be so general.
Also, How will agreement state issues be
handled?


F. P. Gillespie
MEMBER, RIRB
11/12/85
DATE

RES INDEPENDENT REVIEW BOARD

VOTING SHEET

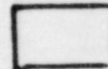
TO: F. P. GILLESPIE, CHAIRMAN, RIRB

FROM: W. M. Morrison, Member, RIRB

TITLE OF RULEMAKING: NOTIFICATION OF NRC OF CASE OF BANKRUPTCY FILING



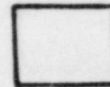
AGREE WITH RECOMMENDATIONS
IN RES RULEMAKING REVIEW
PACKAGE



REQUEST RIRB
MEETING.



MODIFY RECOMMENDATIONS IN
RES RULEMAKING REVIEW
PACKAGE AS INDICATED BELOW



NOT PARTICIPATING.

COMMENTS AND SUGGESTIONS:

Even though NRC would know of a Part 50 bankruptcy because of the publicity, it's not clear why Part 50 licensees are not included in this rulemaking for completeness

W M Morrison

W. M. Morrison
MEMBER, RIRB

Nov. 12, 1985

DATE

ROUTING AND TRANSMITTAL SLIP

Date NOV 5 1985

TO: (Name, office symbol, room number, Building Room (Bldg))	Initials	Date
1. F. P. Gillespie, Chairman, RIRB		
2. K. R. Goller, Member, RIRB		
3. W. M. Morrison, Member, RIRB		
4.		
5.		

<input checked="" type="checkbox"/> Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS "Notification of NRC of Case of Bankruptcy Filing"

RIRB members are requested to conduct an independent review of the attached RES rulemaking review package and provide the Chairman, RIRB, with their voting sheets indicating their positions on the rulemaking.

Responses by c.o.b. NOV 14 1985 will be appreciated. RCS will use the voting sheets to assemble the complete RES review package for eventual transmittal to the OEDO and the Director of the user office.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
RCS staff	Phone No. 443-7885

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.606

TASK LEADER
REVIEW PACKAGE
WITH
DIVISION DIRECTOR CONCURRENCE

DRAFT

DISTRIBUTION: RES RDG/CHRON
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DFross
FPGillespie
GAArlotto
KGSteyer
FPCardile

MEMORANDUM FOR: William J. Dircks
Executive Director for Operations

FROM: Robert B. Minogue, Director
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The basis for our recommendation is as follows:

- o Proceeding with rulemaking will result in NRC having timely knowledge of significant financial problems being experienced by materials licensees, specifically licensees involved in bankruptcy proceedings who may not have the resources for proper handling and securing of licensed material, so that NRC can take necessary actions to assure that the health and safety of the public is protected. Cases have occurred in which materials licensees filed for bankruptcy, abandoning property and licensed material, and NRC has not generally been aware that this happened.
- o Proceeding with rulemaking will enable NRC to be better aware of potential licensee problems in handling, securing, and disposing of licensed materials resulting from severe economic conditions and thus should result in reduction in NRC resources involved in such activities as enforcement actions and interface with a concerned public regarding contaminated sites.
- o The impact of this rulemaking on industry is negligible since the United States Code already contains requirements that persons notify creditors of bankruptcy, thus this rule only consists of one additional notification, and that is simply a notification of NRC by mail at the time of bankruptcy filing. In addition, as noted above, the net impact on the NRC should be a reduction in resources.

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SURNAME							
DATE							

OFFICIAL RECORD COPY

Mr. Dircks

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DRAFT

- o This action is consistent with previous Commission actions as contained in proposed amendments to 10 CFR Parts 30, 40, 70, and 72 on decommissioning funding and in existing requirements in 10 CFR 61 on closure of low-level waste sites. This action was requested in a memorandum from John G. Davis, Director, NISS, to R. B. Minogue, Director, RES (~~see Enclosure 5~~).

The complete RES review package has been sent to OEDU (Attention: DEDROGR) and to the Director, NISS.

Robert B. Minogue, Director
Office of Nuclear Regulatory Research

~~Enclosures:~~

- ~~1. Draft Staff Recommendation~~
- ~~2. Task Control Form~~
- ~~3. Preliminary Value/Impact Statement~~
- ~~4. Draft NRC Regulatory Agenda Entry~~
- ~~5. Memorandum, J. G. Davis, NISS to R. B. Minogue, RES~~

OFFICE	RES:CEBR	RES:CEBR	RES:CEI	CHMN:RIRB	RES:DD	RES:DIR
SURNAME	FPCardile:h	KGSteyer	GAriotto	FPGillespie	DFRoss	RBMinogue
DATE	10/28/85	10/29/85	10/31/85	10/.../85	10/.../85	10/.../85

TASK LEADER REVIEW PACKAGE

TITLE:

Requirements for Notification of NRC of Cases of Bankruptcy Filing

CFR CITATION:

10 CFR 30, 40, 61, 70, 72

ABSTRACT:

The proposed rule would require licensees to notify the appropriate regional office of the NRC within a certain time period in the event of a bankruptcy proceeding involving the licensee. There is no action required of a licensee by these amendments unless and until a bankruptcy petition is filed. Notification of the NRC in cases of bankruptcy would alert the Commission so that it may deal with potential hazards to the public health and safety posed by a licensee that does not have the resources to properly handle licensed radioactive material or clean up possible contamination. Cases have occurred in which materials licensees have filed for bankruptcy and NRC has not generally been aware of this.

The net overall impact on industry of this rule should be negligible since this rule only consists of one additional notification beyond that already required by the United States Code and that is simply a notification of NRC by mail. The net effect on NRC should be a reduction in staff resources since it would put NRC in a better reactive mode for proceeding with necessary enforcement actions. The benefit of the rule is that it will assist in protection of the public health and safety by reducing the risk of radiation exposure to the public and workers by enabling NRC to be aware of potential licensee problems in handling and disposing of radioactive materials caused by severe economic problems.

TIMETABLE:

NPRM	05/15/86	
NPRM	Comment Period Begin	05/15/86
NPRM	Comment Period End	07/15/86
Final Action	04/30/87	

LEGAL AUTHORITY:

42 USC 2201

EFFECTS ON SMALL BUSINESS AND OTHER ENTITIES: Yes

AGENCY CONTACT:

Frank Cardile
Office of Nuclear Regulatory Research
Washington, DC 20555
301 443-7815

Draft Staff Recommendation Related to
The New Proposed RES-sponsored Rulemaking
on "Amendments to 10 CFR 30, 40, 61, 70,
and 72 Requiring Licensees to Notify NRC
in Cases of Bankruptcy Filing"

Based on the detailed review of the new proposed rulemaking it is the staff's draft recommendation that the NRC should proceed with this rulemaking, specifically that a Notice of Proposed Rulemaking (NPRM) be prepared for publication in the Federal Register. This proposed rulemaking would require 10 CFR 30, 40, 61, 70, and 72 licensees to notify the NRC in the event of the commencement of a bankruptcy proceeding involving the licensee. There is no action required of a licensee by these amendments unless and until a bankruptcy petition is filed.

This draft recommendation is based on the staff finding that there is a need for the rulemaking, that it is important relative to accomplishing NRC's mandate of protecting public health and safety, that it is consistent with applicable policies, and that it provides a benefit without imposing an undue cost. These findings are discussed below.

The need for this proposed rulemaking is that NRC should have timely knowledge of significant financial problems being experienced by materials licensees so that the health and safety of the public is protected. Licensees experiencing severe economic hardship, in particular licensees involved in bankruptcy proceedings, may not be capable of meeting costs for proper handling of licensed radioactive material and for facility decontamination in a safe manner. This can result in spread of contamination and problems with waste disposal activities. Cases have occurred in which materials licensees filed for bankruptcy vacating property, abandoning licensed material, and being unable to dispose of waste, and the NRC has not generally been aware that this has happened. There are presently no regulatory requirements that licensees notify the NRC when filing for bankruptcy. Hence, currently, NRC has no means by which it can be made aware of such situations. As a result of the problems which have occurred, NMSS has requested, in a memorandum from J. G. Davis, NMSS to R. B. Minogue, RES, (see Enclosure 5) that RES undertake rulemaking in this area.

This action is consistent with previous Commission actions as contained in proposed amendments to 10 CFR Parts 30, 40, 70, and 72 on funding for decommissioning and as contained in existing requirements in 10 CFR 61 on funding of the closure of low-level waste burial sites.

Benefits of proceeding with the NPRM include providing industry and the public the opportunity for input to decisions made in the NRC rulemaking process. The benefit of the rule itself is that NRC will have in place a specific requirement concerning notification of NRC that a licensee has filed a petition for bankruptcy. This will assure NRC's mission of protecting public health and safety is carried out by enabling NRC to be aware of potential licensee problems in handling and disposing of radioactive materials due to severe

financial problems and thus reducing the risk of radiation exposure to the public and workers. With regard to impacts of this rule, no action is required of a licensee by the rule (and there would thus be no NRC action) unless and until a bankruptcy petition is filed. The net effect of this rule on NRC should be a reduction in staff resources since it would put NRC in a better reactive mode for proceeding with necessary enforcement actions and interfaces with a concerned public regarding contaminated sites. The net overall cost to industry should be negligible since persons are already required by the United States Code to notify creditors of bankruptcy, thus this rule only consists of one additional notification and that is simply a notification to NRC by mail.

PRELIMINARY VALUE/IMPACT STATEMENT FOR TASK-502-1

NOTICE OF PROPOSED RULEMAKING - AMENDMENTS TO
10 CFR 30, 40, 61, 70, AND 72 REQUIRING LICENSEES
TO NOTIFY NRC IN CASES OF BANKRUPTCY FILING

1. PROPOSED ACTION

1.1 Description

Current NRC regulations contain requirements for issuance of licenses and terms and conditions of those licenses with regard to design of facilities and use of material. The issue to be addressed in this rulemaking is that a licensee who is experiencing severe economic hardship may not be capable of carrying out his licensed activities in a manner which protects public health and safety. In particular, there can be problems when a licensee involved in bankruptcy proceedings cannot meet costs for proper handling of licensed radioactive material and for decontamination of his facility in a safe manner. Improper materials handling or decontamination activities can lead to spread of contamination throughout a licensee's facility and the potential for dispersion of material to unrestricted areas. It can also result in difficulties with the licensee's waste disposal activities.

The proposed action consists of amendments to 10 CFR Parts 30, 40, 61, 70, and 72 which would require licensees to notify the NRC in the event that the licensee files for bankruptcy.

1.2 Need for Proposed Action

The necessity of addressing the issue indicated in section 1.1 is that NRC should have timely knowledge of significant financial problems being experienced by materials licensees so that NRC can take necessary actions to assure that the health and safety of the public is protected. Cases have occurred in which material licensees filed for bankruptcy and the NRC has not generally been aware that this has happened. Among those licensees whose

financial situation has jeopardized cleanup are included the J. C. Haynes Co., the Pesses Co., Luminous Processes, Inc., and Allied Technology, Inc. This has resulted in situations in which NRC inspectors have found belatedly that a licensee has vacated property and abandoned licensed material or that a licensee has been unable to decontaminate his facility and properly dispose of the waste.

There are presently no regulatory requirements that licensees notify the NRC when filing for bankruptcy. Hence, currently, NRC has no means by which it can be made aware of such situations. As a result of the problems which have occurred, NMSS has requested RES (memorandum J. G. Davis, NMSS, to R. B. Minogue, RES, 5/29/85) to undertake rulemaking in this area.

There is some urgency to get on with this effort due to the large number of fuel cycle and materials licensees (greater than 3000) and the fact that a number of these situations, including those noted above, have already occurred. As noted above, the NRC needs to have means in place so that it is alerted and can take necessary action to deal with potential hazards to the public health and safety that may be posed by a licensee that does not have the resources to properly secure his licensed material or to clean up possible contamination.

1.3 Value/Impact of Proposed Action

The effect of the rulemaking, including benefits and costs, on the NRC, industry, and public is discussed in this section.

1.3.1 NRC

The benefit of the rule to NRC is that it would have in place a specific requirement concerning notification of NRC that a licensee has filed a petition for bankruptcy. This will assure NRC's mission of protecting public health and safety is carried out by reducing the risk of radiation exposure to

the public and workers by enabling NRC to be aware of potential licensee problems in handling and disposing of radioactive materials due to severe financial problems. Prompt identification of these situations can result in reduction in NRC resources involved in such activities as enforcement actions and interfaces with a concerned public regarding contaminated sites.

Impact on NRC staff will be the staff time necessary to complete rulemaking. This is discussed below in section 6. With regard to implementation of a final rule, as noted in section 2, no NRC activity is necessary unless and until a licensee submits a notification to the NRC. At that time there may be staff resources involved in reacting to this notification. However, even in the absence of this rule, NRC would still have to react to any health and safety problems brought about by bankruptcy. As noted above, a benefit of this rule is that it would put NRC in a better reactive mode and reduce time involved. Thus, the net effect of this rule should be a reduction in staff resources.

1.3.2 Industry

Industry will benefit in that in situations of this type prompt and clear NRC actions can take place regarding materials handling and disposal. In addition, the rulemaking process will assure that industry has an input to the decisionmaking regarding the issue of notification of NRC regarding bankruptcy.

With regard to the impact of a final rule, as noted in section 2, there is no action required of a licensee unless and until a bankruptcy petition is filed. Hence, there is no impact from this rule unless bankruptcy filing occurs. Even in the event of bankruptcy, the impact of this rule on licensees is small since licensees are required by the United States Code to notify creditors of bankruptcy, hence this rule only consists of one additional notification. In addition, the required action consists only of a notification by mail to the NRC representing less than one-half person-day of effort. The net overall cost to the industry is negligible.

1.3.3 Public

The benefit to the public will be a reduced risk of potential radiation exposures resulting from improper handling or disposal of radioactive wastes or facility decontamination due to the improved capability of NRC to react in a timely way to potential severe financial problems to protect public health and safety. This reduction in risk would apply to both the general public and workers who might be involved at the facility. The risk could result from either direct exposure to contamination or releases of radioactivity from a contaminated facility.

2. TECHNICAL APPROACH

The issue will be addressed through rulemaking in the following way. Under the proposed regulations, each licensee would be required by regulation to notify the appropriate regional office of the NRC within a certain time period in the event of the commencement of a bankruptcy proceeding involving the licensee. According to the United States Code a bankruptcy case is commenced by filing a petition with a court by or against a person for the purpose of judging him bankrupt. There is no action required of a licensee by these amendments unless and until a bankruptcy petition is filed.

Notification of the NRC in cases of bankruptcy would alert the Commission so that it may deal with potential hazards to the public health and safety posed by a licensee that does not have the resources to properly secure the licensed material or clean up possible contamination. These NRC actions may include orders to modify or amend a license or other necessary action and could include limitations on licensed activity which would only permit storage of material.

3. PROCEDURAL APPROACH

3.1 Procedural Alternatives

Potential NRC actions include:

- o No Action
- o NUREG Report
- o Regulatory Guide, Branch Technical Position
- o Rulemaking

3.2 Value/Impact of Procedural Approach

One alternative is to take no action on this matter, however, current regulations in 10 CFR Parts 30, 40, 61, 70, and 72 do not address the situation of the potential health and safety implications of bankruptcy. As noted in detail in section 1.2 this has caused problems in the past and will likely do so in the future.

NUREG reports are a convenient means for providing information, however, NUREG reports usually contain only results of specific studies and are not suitable in this situation. Regulatory Guides or Branch Technical Positions could also be used, however, as pointed out above, there are no existing regulations on which to base such guidance. Lacking standards developed from a formal rulemaking in this area might leave any such guidance open to challenge.

Rulemaking would provide clearly implementable requirements regarding licensees' responsibility to notify the NRC in the case of a filing of a petition of bankruptcy. These standards would reduce uncertainty in this area and provide for prompt action by licensees in future situations of this type with the result that NRC can take necessary action to protect the public health and safety. A formal rulemaking also has the advantage of offering the

best opportunity to allow all affected parties to provide input on the development of such standards, as well as developing prescriptive standards with the weight of formal rulemaking behind them. This can be accomplished with a rulemaking that appears, based on the need expressed by NMSS, to be a relatively straightforward rulemaking not involving significant resources. It is expected that the proposed rule would be issued by the EDO.

An alternative form of the rulemaking would be to combine it with related rulemaking. Currently, NRC has issued and proposed rules on decommissioning of nuclear facilities and an advanced notice of proposed rulemaking on financial assurance for cleanup following accidental releases. However, it would be impractical to combine these efforts because the timing of combining them would be very difficult due to the varying stages that these efforts are at and because of differences in the nature of the rulemaking. In addition, as noted above, this rulemaking addresses a specific topic and should be relatively straightforward in its development and issuance.

3.3 Decision on Procedural Approach

Based on the above preparation of a proposed rule in this area is the staff's recommended approach.

4. STATUTORY AUTHORITY

4.1 NRC Authority

The proposed action involves 10 CFR Parts 30, 40, 61, 70 and 72. The proposed amendments will be issued under citations of authority presently codified for the respective parts.

4.2 Need for NEPA Review

The proposed action will clarify existing regulations and is essentially administrative in nature. There will be no substantive or significant impact of an environmental nature. Thus, no environmental impact statement or appraisal is required.

5. RELATIONSHIP TO OTHER EXISTING OR PROPOSED REGULATIONS OR POLICIES

The proposed action is related to existing regulations in 10 CFR 30, 40, 61, 70, and 72 in the area of terms and conditions of licenses with regard to use of material. In the area of assurance of funding for use of material or facility cleanup the proposed action is related to proposed amendments to 10 CFR Parts 30, 40, 70, and 72 on decommissioning funding and to existing requirements in 10 CFR 61 on funding of the closure of low-level waste burial sites.

6. SUMMARY AND CONCLUSIONS

The proposed action will specify procedures for licensee notification of the NRC in cases of filing for bankruptcy. This is necessary so that the NRC is aware of severe licensee economic conditions that can impact on his capability to handle radioactive materials and decontaminate his facility so that NRC can take timely and appropriate action to protect the public health and safety. The impact of this action is minimal.

NRC resources needed for the rulemaking consists of approximately 0.25 staff year in RES. Other offices can expect minor impact (approximately 0.1 staff year) on their workloads to review RES's work. It is estimated that a proposed rule would be issued for comment under W. J. Dircks signature by May 1986.