in reporting procedures would require handlers to report information to the Board monthly, or 12 times per year. Additional, more accurate and timely information would thus be available to the Board and industry, facilitating improved decision making and program administration. This form will be completed by 115 handlers regulated under the marketing order. The time required to complete this form is estimated to average 15 minutes per response. Using this form increases the estimated total annual burden on handlers by 144 hours, from 201 to 345 hours. Also, the number of total annual responses supplied by handlers for the entire almond information collection under the order increases from 6,022 to 6,597.

These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information and AMS is the secondary user.

This proposed revision to the currently approved information requirements issued under the order is as follows:

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.401 hours per response.

*Respondents:* California almond growers, handlers, and accepted users of inedible almonds.

*Estimated Number of Respondents:* 7,658.

*Estimated Number of Responses per Respondent:* .86.

*Estimated Total Annual Burden on Respondents:* 2,656 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0071 and the California Almond Marketing Order No. 981, and be sent to USDA in care of the docket clerk at the address referenced above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this proposal will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CAR part 981 is proposed to be amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 981.472, paragraph (a) is revised to read as follows:

**§ 981.472 Report of almonds received.**

(a) Each handler shall report to the Board, on or before the 5th calendar day of each month, on ABC Form 1, the total adjusted kernel weight of almonds, by variety, received by it for its own account for the preceding month.

* * * * *

Dated: December 28, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–34 Filed 1–4–99; 8:45 am]

BILLING CODE 3410–02–P

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 50

**[Docket No. PRM–50–64]**

## Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc.; 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 the Atlantic City Electric Company, Austin Energy, Central Maine Power Company, Delmarva Power & Light Company, South Mississippi Electric Power Association, and Washington Electric Cooperative, Inc. (petitioners). The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–64. The petitioners are all non-operating joint owners of nuclear plants who have concerns about potential safety impacts that could result from economic deregulation and restructuring of the electric utility industry. The petitioners are requesting that the enforcement provisions of NRC regulations be amended to clarify NRC policy regarding the potential liability of joint owners if other joint owners become financially incapable of bearing their share of the burden for safe operation or decommissioning of a nuclear power plant.

**DATES:** Submit comments by March 22, 1999. 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 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability 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).

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, 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: DLM1@NRC.GOV.

**SUPPLEMENTARY INFORMATION:**

## Background

The Nuclear Regulatory Commission received a petition for rulemaking submitted by the petitioners. The petitioners are all non-operating joint owners of nuclear power plants who are concerned about their potential liability in the event that other co-owners or the licensee(s) licensed to possess and operate those nuclear power plants were to default on, or become financially incapable of bearing, their share of the costs of operating in accordance with NRC requirements. Specifically, the petitioners are concerned that the NRC's ''Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry'' (Policy Statement) published on August 19, 1997 (62 FR 44071), has resulted in confusion among joint owners of nuclear power plants regarding the potential liability of the owner of a relatively small ownership share of a nuclear power plant. The petitioners believe that a joint owner could incur the burden of all or an excessive portion of a plant's costs if other joint owners or the operators defaulted or became financially incapable of bearing their share of the burden. The petitioners believe that the NRC might ignore existing *pro rata* cost sharing arrangements. The petitioners also believe that the NRC has published no information regarding what would constitute a *de minimis* share and under what circumstances the NRC might find the imposition of joint and several liability necessary to protect the public health and safety.

The petitioners have concluded that these factors have caused much confusion and uncertainty about the potential liability of a joint owner, and can adversely affect the ability to raise capital in an uncertain market that is undergoing consolidation and restructuring. The petitioners believe that the Policy Statement might stifle the emerging market for the sale of nuclear power plants and associated interests, and have concluded that the unsettled nature of potential liability would adversely affect joint owners who wish to be acquired by other utilities because decommissioning costs are unknown. The petitioners request that the issue of potential liability among joint owners be resolved by amending the regulations pertaining to enforcement in 10 CFR Part 50.

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–50–64. The NRC is soliciting public comment on the petition for rulemaking.

## Discussion of the Petition

The petitioners note that the NRC Policy Statement issued on August 13, 1997 and published in the **Federal Register** on August 19, 1997 (62 Fed. Reg. 44071), ''Final Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry'' (Policy Statement) contemplated how NRC would respond to potential safety impacts on power reactor licensees that could result from economic deregulation and restructuring of the electric utility industry. Although the NRC recognized that many licensed nuclear power plants are jointly owned facilities, the petitioners are concerned that the NRC stated that *pro rata* cost sharing arrangements might be ignored in ''highly unusual situations where adequate protection of public health and safety would be compromised if such action were not taken, to consider imposing joint and several liability on co-owners of more than a *de minimis* share when one or more co-owners have defaulted.'' The petitioners are also concerned that the NRC has published no information regarding what would constitute a *de minimis* share and the situation where the NRC might find the imposition of joint and several liability necessary to protect the public health and safety. The petitioners believe that the quoted portion of the Policy Statement appears to create a possibility that the owner of a small share of a nuclear power plant could be held responsible for all or an excessive portion of a plant's costs if other co-owners or the operators became financially incapable of meeting their *pro rata* obligations.

The petitioners contend that these factors create much uncertainty as to the potential liability of a joint owner and could adversely affect a joint owner's ability to raise capital in an industry undergoing consolidation and restructuring. The petitioners believe there is an emerging market for the sale of nuclear power plants and interest in those plants that could be stifled. The petitioners also believe that the unsettled potential liability issue could prevent co-owning utilities from being acquired by other utilities because actual or projected costs, such as decommissioning costs, are unknown.

The petitioners stated that a group of joint owners requested NRC review of the Policy Statement and ultimately petitioned for judicial review in the U.S. Court of Appeals for the D.C. Circuit, *American Public Power Association, et al. v. Nuclear Regulatory Commission, et al.* (Case No. 98–1219). Although the case was dismissed after an agreement between the parties, the NRC stipulated that future legal challenges on the potential liability issue of joint owners would not be precluded by the dismissal.

The petitioners have proposed the following language they believe will eliminate confusion and establish a stable regulatory process on the potential liability issue, and request that it be included among the enforcement provisions in 10 CFR part 50:

> Whenever the Commission finds it necessary or desirable to impose additional requirements by rule, order or amendment on a person subject to this part to promote or protect the public health and safety, the additional requirements will be directed first to the person licensed to possess and operate the facility. If it becomes necessary to impose additional requirements on persons who only own the facility, and were never licensed to operate, then the Commission will not impose greater than the agreed allocation of responsibility among all the owners and operators reflected in applicable joint ownership or similar agreements pertaining to the plant.

Although the petitioners agree that all licensees must comply with their licenses, they believe the prospect of joint and several liability is directly contrary to joint ownership agreements in which ownership commitments were made and substantial sums of capital were raised based on a contractual *pro rata* allocation of liability for plant costs. The petitioners also contend that accounting of assets and liabilities for potential sales of ownership interests is made more uncertain because of the unsettled potential joint liability issue.

In addition to the petition for rulemaking, the petitioners have attached a document entitled, ''Memorandum of Law in Support of Petition for Rulemaking.'' The petitioners state that the Atomic Energy Act of 1954, as amended (AEA), does not authorize the NRC to impose any liability (*per se*) and only allows the NRC to impose certain substantive safety obligations on licensees. The petitioners state that the Price Anderson Act (AEA § 170), contains an elaborate statutory framework for public liability and associated actions, and provides for various fees and NRC involvement in deferred premiums. However, the petitioners contend that the NRC has no public safety authority to impose liability or initiate or adjudicate claims of liability on behalf of the public.

Under the Price Anderson Act, the petitioners note that legal actions are brought by injured persons, rules for

decision in public liability cases are derived from State law, and that the U.S. district courts have jurisdiction to adjudicate claims. The petitioners note that although the AEA and congressional appropriations acts permit the NRC to impose and collect fees, they believe the power to create fee liability does not extend to other types of liability. The petitioners believe that although the NRC has authority to impose financial qualifications requirements and has used this authority to require funds to be provided for decommissioning, no comparable funding requirement for operation exists. The petitioners also note that although the Environmental Protection Agency, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), has authority to initiate safety improvements at taxpayers' expense and then sue the licensee for reimbursement, nothing in the AEA allows the NRC to decommission a plant and impose liability for reimbursement. The petitioners state that the NRC policy on joint and several liability could be understood to ''. . . hold co-licensees jointly and severally responsible for meeting specific substantive *safety obligations* under the AEA. However, even as so understood, the Commission's statement is directly contrary to the contractual basis on which joint ownership arrangements for nuclear power plants have been structured. In most, if not all, such arrangements, ownership commitments were made and substantial sums of capital raised based on a contractual *pro rata* allocation of responsibility for plant costs.'' (Emphasis in original). The petitioners state that because the NRC has implicitly accepted these arrangements, all interested parties would have their reasonable expectations overturned by the imposition of joint and several liability.

The petitioners assert that NRC has approved many agreements among co-owners based on a contractual *pro rata* allocation of responsibility for plant costs. The petitioners assert that a draconian imposition of liability is not necessary because even nuclear power plant licensees in bankruptcy have always been able to comply with NRC safety requirements. The petitioners note that the situation at Three Mile Island Unit 2 after the accident was adequately addressed by the accident cleanup insurance requirements in 10 CFR 50.54(w). The petitioners believe that the NRC has never faced a situation where a nuclear power reactor licensee was financially unable to meet its safety obligations and that even with the operating licensee in bankruptcy, the NRC's safety authority is preserved. The petitioners cite *Midlantic National Bank* v. *New Jersey Department of Environmental Protection,* 474 U.S. 494, 506–507 (1986); *Ohio* v. *Kovacs,* 469 U.S. 274 (1985); and *Penn Terra, Ltd.* v. *Department of Environmental Resources,* 733 F. 2d 267 (3rd Cir. 1984), as cases which found that a bankruptcy court does not have the power to authorize an abandonment without compliance with environmental laws and protection of the public's health and safety.

The petitioners also believe the Policy Statement is inconsistent with the final rule published on September 22, 1998 (63 FR 50465), and associated proposed rule that was published on September 10, 1997 (62 FR 47588), ''Financial Assurance Requirements for Decommissioning Nuclear Power Reactors,'' in which the NRC noted difficulties that could stem from attempting to impose joint liability on co-owners and co-licensees for decommissioning costs. These difficulties included problems regarding potential disagreements on decommissioning methods, the inhibition of flexibility, the weakening of competitive position, and implementation that the petitioners believe exist regarding potential joint owner liability. The petitioners reiterate that under the AEA, it would be unreasonable and unlawful for the NRC to impose ''an onerous safety obligation on non-operating co-owners simply because the person with the real safety obligation'the operator'is facing financial difficulty'' especially when the NRC has the authority to impose financial qualifications requirements on those who propose to operate a reactor.

The petitioners also contend that the Policy Statement raises questions of impermissible retroactivity to nuclear power plant owners. The petitioners note that in *Landgraf* v. *USI Film Products,* 511 U.S. 244, 265–266 (1994), the Supreme Court has held that:

> [E]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted * * *. In a free, dynamic, society, creativity in both commercial and artistic endeavors is fostered by a rule of Law that gives people confidence about the legal consequences of their actions.

In *General Motors Corp.* v. *Romein,* 503 U.S. 181, 191 (1992), the petitioners note that the Supreme Court ruled that: ''Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions.'' In *Bowen* v. *Georgetown Univ. Hospital,* 488 U.S. 204, 208 (1988), the petitioners also noted that the Supreme Court found that ''congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.''

The petitioners believe that these cited decisions illustrate that an NRC order imposing onerous safety requirements on a co-owner licensee disregard pro rata sharing agreements, defeat legitimate expectations, and upset settled transactions. The petitioners assert that joint owners have relied upon *pro rata* arrangements for decades with implicit NRC approval and that the industry restructuring and emerging market for nuclear power plants require that these sharing agreements continue. The petitioners believe that under *Bowen,* the NRC cannot issue retroactive rules unless that authority is granted explicitly by statute. The petitioners believe that the NRC does not possess this authority because nothing in the AEA specifically gives the NRC the power to issue retroactive rules.

The petitioners distinguish backfit rules from those that are retroactive. The petitioners acknowledge that the vast majority of NRC backfits apply to plant operation after the effective date of the backfit and could never have been applied without the beginning of plant operation. However, the petitioners state that the imposition of new requirements on non-operating co-owners without regard for *pro rata* cost sharing agreements is distinguishable from a backfit because entities licensed to own or operate have no reasonable expectation that the NRC will never impose additional safety requirements as a condition of continued operation. The petitioners maintain that for non-operating co-owners there is reasonable expectation that the NRC would continue to honor *pro rata* cost-sharing contractual agreements even though NRC has power to impose additional safety measures.

The petitioners acknowledge that any determination that an NRC rule or order is impermissibly retroactive will be made by the courts. However, the petitioners have concluded that an NRC imposition of a new operational safety requirement on a non-operating co-owner group that holds all co-owners equally responsible and disregards *pro rata* cost-sharing agreements would be unreasonable and unlawful.

Lastly, the petitioners acknowledge that the NRC has the authority to prevent an unsafe plant from operating. They also agree that a plant that cannot operate is a liability, not an asset. The petitioners cite *Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2)*, CLI–88–10, 28 NRC 573 (1988), and state that it is in the interest of all licensees, co-owners, and operators to agree on the funding of necessary safety measures so the plant can operate. However, the petitioners believe that the Policy Statement interferes with licensees' rights to make their own decisions regarding allocation of safety expenses. The petitioners have concluded that NRC interference in allocation decisions among co-owners is not necessary for safety and creates potentially great difficulties for co-owning utilities who wish to consolidate, restructure, or sell assets.

**The Petitioners' Conclusions**

The petitioners have concluded that the NRC Policy Statement regarding electric utility deregulation and restructuring has caused great confusion among non-operating co-owners about the issue of potential joint liability if an operating licensee becomes financially incapable of meeting license conditions. The petitioners have concluded that the NRC might ignore existing *pro rata* contractual agreements among joint licensees and that no information has been published regarding what would constitute a *de minimis* share or under what circumstances the NRC might find the imposition of joint liability necessary to protect the public health and safety. The petitioners have also concluded that the unsettled potential liability issue could mean that a co-owner of a very small ownership share could become financially incapable of fulfilling its contractual obligations. Lastly, the petitioners have concluded that these factors might stifle an emerging market for the sale of nuclear power plants and associated interests because future operating and decommissioning costs are unknown.

The petitioners request that the issue of potential liability among joint owners be resolved as requested in their petition by amending the regulations pertaining to enforcement in 10 CFR part 50.

Dated at Rockville, Maryland, this 29th day of December, 1998.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 99–97 Filed 1–4–99; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–47–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes. That AD currently limits the number of operations at increased cabin pressure differential, and requires repetitive structural inspections for cracking of the fuselage, and repair or replacement of parts, if necessary. This action would require additional repetitive inspections for cracking of the fuselage. This proposal is prompted by the determination that airplanes operating at increased cabin pressure differential are more likely to develop fatigue cracking earlier in their service lives than those airplanes operating at normal cabin differential pressures. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the airplane fuselage, which could result in reduced structural integrity of the airplane.

**DATES:** Comments must be received by February 4, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–47–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On August 14, 1989, the FAA issued AD 89–18–10, amendment 39–6310 (54 FR 34768, August 22, 1989), applicable to certain British Aerospace Model BAC 1–11 200 and 400 series airplanes. That AD currently limits the number of operations at increased cabin pressure differential, and requires repetitive structural inspections for cracking of the fuselage, and repair or replacement of parts, if necessary. That action was prompted by the determination that airplanes operating at increased cabin pressure differential are more likely to develop fatigue cracking earlier in their service lives than those airplanes operating at normal cabin differential pressures. The requirements of that AD are intended to prevent inability of the