

# 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

[PRM-50-89; NRC-2007-0018]

#### Raymond A. West; Consideration of Petition in Rulemaking Process

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Closure of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received a petition for rulemaking dated December 14, 2007, and revised on December 19, 2007, filed by Raymond A. West (petitioner). The petition was docketed by the NRC and has been assigned Docket No. PRM-50-89. The petitioner is requesting that the NRC amend the regulations that govern domestic licensing of production and utilization facilities at nuclear power plants. Specifically, the petitioner is requesting that the regulations that govern codes and standards at nuclear power plants be amended to provide applicants and licensees a process for requesting NRC approval of changes or modifications to American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) cases that are listed in the relevant NRC-approved regulatory guides cited in the current regulations. The petitioner believes that the current requirements do not allow changes or modifications to be proposed as alternatives to NRC-approved ASME Code cases. This action provides notice that the NRC will consider the petitioner's request in the NRC's rulemaking process.

**DATES:** The petition for rulemaking docketed as PRM-50-89 is closed on April 22, 2009.

**ADDRESSES:** The NRC is not soliciting comments at this time. Further NRC action on the issues raised by this petition will be accessible at the federal rulemaking portal, <http://www.regulations.gov>, by searching on

rulemaking docket ID: [NRC-2007-0018].

You can access publicly available documents related to this petition for rulemaking using the following methods:

**Federal e-Rulemaking Portal:** Go to <http://www.regulations.gov> and search for documents filed under the following rulemaking docket ID: [NRC-2007-0018].

**NRC's Public Document Room:** The public may examine, and have copied for a fee, publicly available documents at the NRC's Public Document Room (PDR), Public File Area, Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Document Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** L. Mark Padovan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-1423 or Toll-Free: 1-800-368-5642 or by e-mail: [Mark.Padovan@nrc.gov](mailto:Mark.Padovan@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The NRC has received a petition for rulemaking dated December 14, 2007, as revised on December 19, 2007, submitted by Raymond A. West (petitioner). The petitioner requests that the NRC amend 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." Specifically, the petitioner requests that 10 CFR 50.55a, "Codes and Standards," be amended to permit licensees and applicants to directly request approval of an alternative for changes to NRC-approved ASME Code cases.

The NRC determined that the petition met the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The

petition was docketed by the NRC as PRM-50-89 on December 26, 2007.

##### II. Discussion of the Petition

The petitioner states that 10 CFR 50.55a currently provides no defined provisions to allow applicants or licensees to request changes or modifications to ASME Code cases listed in NRC Regulatory Guides 1.84, 1.147, or 1.192 that NRC has approved for use under §§ 50.55a(b)(4), (b)(5), and (b)(6).

The petitioner states that requirements in § 50.55a(a)(3) for proposing alternatives to the requirements in § 50.55a(a) are limited to the requirements in paragraphs (c), (d), (e), (f), and (g) of that section. The petitioner further states that alternatives to requirements in § 50.55a(b) are not permitted. The petitioner believes that although these requirements were appropriate for many years, when §§ 50.55a(b)(4), (b)(5), and (b)(6) were added, § 50.55a(a)(3) could no longer be used for "direct approval" of changes or modifications to NRC-approved ASME Code cases.

The petitioner notes that ASME Code cases are written by ASME to provide alternatives to existing requirements or to introduce new technologies or methodologies. The petitioner states that it typically takes 4 years for a particular ASME Code case to be accepted for generic use by applicants or licensees in regulatory guides. Most applicants or licensees are willing to wait for generic approval because of the estimated minimum \$12,000 cost to request approval of a particular ASME Code case before it is accepted for use in a regulatory guide. The petitioner states that, in many instances when an attempt is made to use a newly-approved ASME Code case, there are one or two requirements in the code case that cannot be met because:

(1) The need for the ASME Code case has broadened beyond the scope of the approved case,

(2) The committee that developed the ASME Code case did not foresee all possible uses of a particular case, or

(3) Limitations at a particular site may preclude using an ASME Code case without modification.

The petitioner is concerned that problems occur when there is an immediate need to use an ASME Code case that contains most of the requirements needed to resolve an issue

but cannot be used without a modification. The petitioner cites an effort to mitigate primary water stress corrosion cracking (PWSCC) in Alloy 82/182 welds after an ASME Code case was approved by the NRC for use in the appropriate regulatory guide for weld overlay of stainless steel material but not for austenitic nickel-based material that was subject to potential PWSCC. The petitioner states that this issue resulted in licensees having to perform a “work-a-round” by requesting usage of some ASME Code cases with modifications. The petitioner has concluded that use of ASME Code cases with modifications cannot be performed under § 50.55a(a)(3).

The petitioner describes the “work-a-round” that is accepted by the NRC is for an applicant or licensee to propose an alternative to the governing ASME Code requirements, such as using ASME Code Section XI requirements, instead of requesting usage of an ASME Code case with a change or modification. The petitioner states that the NRC allows this type of alternative under § 50.55a(a)(3) because the provisions of § 50.55a(g) govern use of ASME Code Section XI. The petitioner states that, if the need for an alternative is urgent, the only choice an applicant or licensee has is to perform the “work-a-round” described above that the petitioner states has been done routinely. The petitioner has concluded that the NRC has determined that no mechanism for evaluating a licensee’s proposal to an existing NRC approved voluntary alternative is allowed by § 50.55a(a)(3) because it would be “providing an alternative to an alternative.”

The petitioner has proposed draft rulemaking text to address these issues. The petitioner states that his proposed amendments to § 50.55a will clarify this regulation to correct administrative issues associated with alternatives to ASME Code cases when an urgent issue arises that cannot be solved under the current regulatory provisions.

### III. NRC Review of the Petition

The NRC reviewed the issues raised by the petitioner and determined the following:

- Code cases often provide alternatives that have technical merit and, in many instances, are incorporated into future ASME Code editions.
- The ASME Code case process itself constitutes a method of how a licensee can seek to obtain ASME approval for a variation of a previously-approved code case. § 50.55a(a)(3) currently provides specific approaches for obtaining NRC approval of alternatives to ASME Code

provisions. Inasmuch as ASME Code cases are analogous to ASME Code provisions, it is not unreasonable to provide an analogous regulatory approach for obtaining NRC approval of alternatives to ASME Code cases.

For these reasons, the NRC has determined that the issues raised in this petition should be considered in the NRC’s Common Prioritization of Rulemaking process. The NRC uses this process to determine which rulemaking actions to pursue based on available resources and how the actions maintain safety, ensure security of nuclear facilities and materials, increase effectiveness, and maintain openness with stakeholders. Members of the public can track the progress of the issues raised in the petition as they go through the rulemaking process via the “NRC Regulatory Agenda: Semiannual Report (NUREG-0936),” or online at <http://www.regulations.gov>; search on rulemaking docket ID NRC-2007-0018. The changes requested in the petition may or may not be incorporated into 10 CFR 50.55a exactly as requested. With this action, PRM-50-89 is considered resolved and administratively closed.

Dated at Rockville, Maryland, this 3rd day of April 2009.

For the Nuclear Regulatory Commission.

**R.W. Borchardt,**

*Executive Director for Operations.*

[FR Doc. E9-9197 Filed 4-21-09; 8:45 am]

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## FEDERAL TRADE COMMISSION

### 16 CFR Part 317

[Project No. P082900]

RIN 3084-AB12

### Prohibitions on Market Manipulation in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007

**AGENCY:** Federal Trade Commission.

**ACTION:** Revised notice of proposed rulemaking; request for public comment.

**SUMMARY:** Pursuant to Section 811 of Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (“EISA”),<sup>1</sup> the Federal Trade Commission (“Commission” or “FTC”) is issuing a Revised Notice of Proposed Rulemaking (“RNPRM”). The revised proposed Rule in this RNPRM would prohibit any person, directly or indirectly, in connection with the

purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, from knowingly engaging in any act, practice, or course of business—including the making of any untrue statement of material fact—that operates or would operate as a fraud or deceit upon any person, or intentionally failing to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or tends to distort market conditions for any such product. Violations of the revised proposed Rule, if such Rule is adopted, would require proof by a preponderance of the evidence. Anyone violating an FTC rule promulgated under Section 811 of EISA, such as this revised proposed Rule would be if adopted, may face civil penalties of up to \$1 million per violation per day, in addition to any relief available to the Commission under the Federal Trade Commission Act (“FTC Act”).<sup>2</sup> The Commission invites written comments on issues raised by the revised proposed Rule and seeks answers to the specific questions set forth in Section IV.I. of this RNPRM.

**DATES:** Written comments must be received by May 20, 2009. The Commission does not contemplate any extensions of this comment period.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Market Manipulation Rulemaking, P082900” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

<sup>1</sup> Section 811 is part of Subtitle B of Title VIII of EISA, which has been codified at 42 U.S.C. 17301-17305.

<sup>2</sup> 15 U.S.C. 41-58.