

September 24, 2003

DOCKETED  
USNRC

Ms. Annette L. Vietti-Cook  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attention: Rulemakings and Adjudications Staff

September 24, 2003 (2:35PM)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

RE: Supplement to: September 8, 2003, 10 C.F.R. Section 2.808 Motion or, at the Commission's Discretion, 10 C.F.R. Section 2.802 Petition, Responding to 68 Fed. Reg. 51516-51518 (August 27, 2003)

Dear Madam Secretary:

The following is a supplement to the motion or petition, submitted for your consideration on September 8, 2003. The "motion" was submitted pursuant to 10 C.F.R. Part 2, Subpart H, Section 2.808<sup>1</sup> (Authority of the Secretary to rule on procedural matters), and insofar as this motion would be considered by the Commission to be a "petition," it was submitted pursuant to 10 C.F.R. Part 2, Subpart H, Section 2.802 (Petition for rulemaking).

The Nuclear Regulatory Commission (NRC) failed to implement the rulemaking hearing procedures in 10 C.F.R. Part 2, Subpart H for the "hearing process" announced in the August 27, 2003, Federal Register Notice (FRN) (68 Fed. Reg. 51516-51518).

The August 27 FRN, however imperfect, states that "pursuant to the hearing process set forth in subpart H of 10 CFR part 2, the Commission is requesting information from interested members of the public."

10 C.F.R. § 2.804 (Notice of proposed rulemaking) states with respect a "hearing process":

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the Federal Register a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

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<sup>1</sup> All Federal Register notices and Commission regulations cited and quoted herein were found at <http://www.gpoaccess.gov/index.html>.

Template = SECY-067

SECY-02

(b) The notice will include:

(1) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined will be made available at the NRC Web site.

<http://www.nrc.gov>;

(3) The authority under which the regulation is proposed;

(4) The time, place, and nature of the public hearing, if any;

(5) If a hearing is to be held, designation of the presiding office and any special directions for the conduct of the hearing; and

(6) Such explanatory statement as the Commission may consider appropriate.

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The NRC has failed to implement the criteria in § 2.804 in several ways:

- It is unclear what the proposed rule actually is. Contrary to the criteria in Section 2.804(b)(1), the FRN did not state the terms or substance of the proposed rule and identify it as a "proposed rule."
- The FRN did not contain a statement that copies of comments "will be made available at the NRC web site. <http://www.nrc.gov>." With respect copies of comments received by the NRC, the FRN only states that they may be examined at the NRC Public Document Room. Contrary to the criteria in Section 2.804(b)(2), there was no mention in the FRN of the availability of the comments on the NRC web site.
- It is unclear what regulation was being proposed, so it is unclear under what authority it was being proposed. There does not appear to be any authority that sanctions a Section 274o "notice and opportunity for a public hearing" under the 10 C.F.R. Part 2, Subpart H "Rulemaking" provisions. This is contrary to the criteria in Section 2.804(b)(3).
- Contrary to the criteria in Section 2.804(b)(4), there was no statement of the time, place and nature of the public hearing.
- Contrary to the criteria in Section 2.804(b)(5), there has been no designation of a "presiding officer," nor any special directions for the conduct of the hearing under the direction of a "presiding officer."

The NRC failed to provide information pertinent to the August 27 proposed rule on the NRC web site. <http://www.nrc.gov>.

The NRC has established a page on their web site entitled "Documents for Comment." This web page provides the public with information regarding notices and documents, including rulemaking notices, which the public may comment upon.

It does not appear that the August 27 FRN was placed on that web page.

The NRC has also established an electronic "Rulemaking Forum" web page. At this web page members of the public have access to the text of a proposed rule, have access to documents related to the proposed rule, can made comments on the proposed rule electronically, and have access to the various comments that have been submitted.

It appears that, normally, the comments on a proposed rule received by the NRC would be made available on the "Rulemaking Forum," in order to fulfill the criteria in 10 C.F.R. § 2.804(b)(2).

The August 27 proposed rule, for some inexplicable reason, was not placed on the "Rulemaking Forum."

As of this date, I have not received a response to the September 8, 2003, motion, or petition.

Thank you for your prompt consideration of these matters.



Sarah M. Fields  
P.O. Box 143  
Moab, Utah 84532  
435-259-4734  
smfields@moci.net

cc: (Electronic mail)  
William D. Travers, EDO NRC  
Paul H. Lohaus, OSTP NRC  
Dennis Sollenberger, OSTP NRC  
William J. Sinclair, UT DEQ  
Craig Jones, UT DRC