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FOREWORD

The *NRC Regulations Handbook* is designed to assist the NRC staff in drafting and preparing rulemaking documents for publication in the *Federal Register*. The handbook contains procedures, requirements, and background information essential to those who develop or review rulemaking actions for the NRC. The handbook was first published in August 1982 as NUREG/BR-0053; supplements to the handbook were issued in April 1983, June 1984, and September 1985; and it was revised in its entirety in November 1987, December 1989, June 1995, and September 1997. This is the fifth complete revision of the handbook. This revision reflects amendments to Management Directive 6.3, "The Rulemaking Process," which was necessary to reflect the transfer of NRC rulemaking responsibility from the Office of Nuclear Regulatory Research to the Office of Nuclear Material Safety and Safeguards and the Office of Nuclear Reactor Regulation. This revision also reflects significant changes that have occurred since September 1997 in the rulemaking process and NRC procedures.

The handbook is intended to serve as a guidance tool for the professional staff who prepare, review, and coordinate rulemaking items; it provides the information relevant to each step in the rulemaking process. Because some of the information is similar at successive steps in the rulemaking process, there is occasional duplication. Our experience has shown that this format is most helpful to users because it allows them to find all of the needed information concerning a particular step in the process in one place rather than having to follow a system of cross-references. In addition, we have used all odd numbers in designating parts and sections to illustrate one suggested method of leaving room to accommodate future changes.

The handbook also provides guidance to the staff who prepare packages containing a *Federal Register* rulemaking document for transmittal to the Office of the Federal Register. The handbook contains information and examples that may prove helpful to administrative, program

support, and clerical personnel involved in the preparation or tracking of rulemaking packages. Because the rulemaking process changes continuously, the handbook is designed to incorporate future supplements. Specific instructions to update the handbook will accompany any revised material.

Please direct questions concerning the use of the handbook or the rulemaking process, suggestions for improving the content or format of the handbook, or corrections of any errors or inconsistencies in the handbook to me (301-415-7163) or by e-mail (MTL).



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PART 15 - PETITIONS FOR RULEMAKING

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15.1 Legal and procedural background.

(a) The Administrative Procedure Act provides any interested person with the right to petition an agency for the issuance, amendment, or repeal of a rule (5 U.S.C. 553(e)). This statute expands on the "right to petition" provided by the First Amendment to the Constitution and imposes on Federal agencies the obligation to receive, consider, and act upon petitions that are submitted to them.

(b) The NRC implements this statute in regulations that establish the procedures by which any interested person may file a petition for rulemaking with the Commission (10 CFR 2.802). Section 2.802 presents basic information concerning how an interested person submits a petition to the NRC, the minimum information a petition must contain to be acceptable for processing, and the procedures the NRC uses in processing petitions.

(c) In addition to 10 CFR 2.802, the NRC developed and issued Regulatory Guide (RG) 10.12, "Preparation of Petitions for Rulemaking Under 10 CFR 2.802 and Preparation and Submission of Proposals for Regulatory Guidance Documents."

(1) RG 10.12 provides an alternative within the petition process that encourages the petitioner to submit more detailed supporting information in the petition than is minimally required for acceptance. This practice could facilitate NRC's decision on the merits of the petition. The provisions of RG 10.12 do not change any previously existing procedure, right, or obligation. For additional information, see Section 15.5 of this handbook.

(2) RG 10.12 also clarifies procedures by which an interested person may submit proposals to change existing guidance documents. These guidance documents include regulatory guides, bulletins, generic letters, and portions of standard review plans that do not have the force and effect of a regulation but serve to identify or clarify methods or positions acceptable to the NRC staff for compliance with NRC regulations.

15.3 Minimum content requirements.

(a) Paragraph (c) of 10 CFR 2.802 presents the minimum content requirements that a petition for rulemaking must meet for the NRC to find it acceptable for processing. The type of information required is considered the minimum threshold necessary for the NRC to understand the petitioner's concerns and suggested solution and respond to the request in a meaningful way.

(b) A petition for rulemaking must --

(1) Set forth a general solution to the problem or present the substance or text of any proposed regulation or amendment or specify the regulation that is to be revoked or amended;

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested; and

(3) Include a statement in support of the petition that sets forth the specific issues involved; the petitioner's views or arguments with respect to those issues; relevant technical, scientific, or other data involved that are reasonably available to the petitioner; and any other pertinent information necessary to support the action sought. Where possible, the petitioner should note any specific cases in which the current requirements are unduly burdensome, deficient, or need to be strengthened. This information may prove to be extremely important when the NRC considers the merits of the petitioner's suggested amendments.

15.5 Providing additional information with a petition.

(a) RG 10.12 encourages the petitioner to provide more detailed supporting information than that required by 10 CFR 2.802(c). This practice would allow the NRC to treat petitions more expeditiously and facilitate NRC action on petitions with strong technical merit. In addition, the submittal of additional information may improve the priority for processing the petition by the NRC staff.

(b) RG 10.12 specifies the additional supporting information that a petitioner should submit in addition to the minimum threshold requirement. The additional supporting information should include --

(1) The suggested regulatory text necessary to accomplish the petitioner's desired amendment;

(2) The statement of considerations (preamble) for the suggested regulatory change;

(3) Material necessary to indicate compliance with applicable legal requirements such as the National Environmental Policy Act, the Paperwork Reduction Act, and the Regulatory Flexibility Act;

(4) A regulatory analysis;

(5) Material necessary to indicate compliance with the Commission's backfit regulations (10 CFR 50.109, 70.76, 72.62, or 76.76); and

(6) A guidance document, usually in the form of a regulatory guide, when applicable. A regulatory guide usually accompanies a performance-based regulation.

15.7 Contacts with the NRC before the petition is filed.

(a) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing to the Director, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Chief, Rules and Directives Branch. A prospective petitioner may also telephone the Rules and Directives Branch (RDB) on (301) 415-7163 or on the toll-free number for inquiries concerning NRC regulations: (800) 368-5642.

(b) The extent to which a member of the NRC staff may assist a prospective petitioner is limited by 10 CFR 2.802(b). In any consultation before a petition for rulemaking is filed, the assistance that may be provided a prospective petitioner by a member of the NRC staff is limited to --

(1) Describing the procedure and process for filing and responding to a petition for rulemaking;

(2) Clarifying an existing NRC regulation and the basis for the regulation; and

(3) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(c) The NRC staff may not --

(1) Write or assist in the writing of a petition for rulemaking to amend 10 CFR Chapter I for an external party;

(2) Negotiate wording for a specific revision to 10 CFR Chapter I with a petitioner or prospective petitioner; or

(3) Encourage a prospective petitioner to submit a petition for rulemaking in order to bypass normal agency procedures for the initiation and development of a rulemaking action.

(d) NRC employees may not discourage a prospective petitioner from submitting a petition for rulemaking or encourage a petitioner to withdraw a petition once it is submitted.

(e) Informing an individual of the option to petition the Commission or to contact the agency for assistance with the petition process is not considered prohibited assistance. Neither is the NRC staff prohibited from consulting with external parties to assemble necessary information to clarify regulatory deficiencies and evaluate their health and safety significance. A prospective petitioner who needs guidance regarding the submission and processing of petitions for rulemaking should be referred to RDB.

(f) If any improper NRC staff assistance is provided to a prospective petitioner regarding technical or substantive issues, that assistance must be disclosed to the Commission in the paper forwarding the rulemaking action for approval and in any public notice regarding the petition and in any rulemaking that may result from the petition that is published in the *Federal Register*.

15.9 Filing a petition with the NRC.

A prospective petitioner may file the petition with the NRC by addressing it to The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. If any other NRC employee receives a petition for rulemaking or a document that may qualify as a petition, the employee shall forward the document immediately to the Rulemakings and Adjudications Staff, Office of the Secretary (SECY).

15.11 Preliminary processing and threshold determination.

(a) When SECY receives a petition for rulemaking or a document that may qualify as a petition for rulemaking, it records the date of receipt of the document and sends a copy of the document to RDB.

(1) Within 1 day after receiving the prospective petition from SECY, RDB sends a letter to the petitioner that acknowledges receipt of the petition by the NRC. The letter also states that the NRC will update the petitioner on the status of the petition.

(2) RDB performs an initial review of the petition and makes a preliminary sufficiency determination within 2 days after receiving the petition. If RDB determines that the petition obviously meets the threshold requirements of 10 CFR 2.802 (c) (see Section 15.3 of this handbook), RDB begins preliminary processing as discussed in paragraphs (c) and (d) of this section. If RDB questions whether a petition meets the threshold requirements applicable to a petition, RDB requests a determination from the Office of the General Counsel (OGC) as to whether or not the document meets the threshold requirements for a petition for rulemaking. RDB requests that OGC respond to a determination request within 5 working days.

(b) If the document does not meet the requirements for a petition for rulemaking, processing continues as indicated in Section 15.13 of this handbook.

(c) If the document meets the requirements for a petition for rulemaking, RDB takes the following actions within 1 working day.

(1) RDB assigns a docket number to the petition and informs SECY of the assigned docket number. SECY establishes the official docket file for the petition.

(2) RDB forwards a copy of the petition to the Public Document Room.

(3) RDB forwards an advance copy of the petition to the Office of Nuclear Material Safety and Safeguards and the Office of Nuclear Reactor Regulation with a preliminary indication of

the NRC staff office to which the formal request for action on the petition will be submitted.

RDB also forwards an advance copy of the petition to OGC.

(d) Within 10 working days, RDB forwards a formal request for a decision from the appropriate NRC staff office on whether the petition should be processed routinely or handled as a "fast-track" petition (see Section 15.15 of this handbook). A fast-track petition is initially published for comment in the *Federal Register* as a proposed rule in accordance with 10 CFR 2.802(e). RDB prepares a draft notice of receipt of the petition and forwards it with the fast-track request. If the NRC staff office determines that the petition for rulemaking is not suitable for fast-track processing, the NRC staff office is requested to comment and concur on the draft notice of receipt and return it to RDB for publication in the *Federal Register*. RDB requests that the NRC staff office provide its response within 10 working days.

(1) If the NRC staff office determines that fast-track processing is appropriate, processing continues as indicated in Section 15.17 of this handbook.

(2) If the NRC staff office determines that fast-track processing is not appropriate, processing continues as indicated in Section 15.19 of this handbook.

(e) After a petition has been submitted and the NRC staff has reviewed the merits of the petition, discussions between the NRC staff and the petitioner regarding the wording for specific provisions of the regulations must occur in an open, public forum. The NRC shall provide sufficient advance notice to the public in accordance with the guidelines contained in Management Directive (MD) 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff."

15.13 Petitions that do not meet threshold requirements.

(a) If a petition does not include sufficient information to meet the threshold requirements for a petition for rulemaking (see Section 15.3 of this handbook), the Executive Director for Operations (EDO) will make a determination that a petition is deficient. The EDO's determination, which is based upon the recommendation of RDB and OGC, should be made within 30 days from the date of receipt of the petition by SECY. RDB prepares a memorandum to the EDO transmitting this recommendation and a draft letter to the petitioner pointing out the aspects in which the petition is deficient.

(b) The petitioner is informed as to how the petition is deficient and is given an opportunity to submit additional information. If a petitioner does not correct the deficiency within 90 days from the date of notification by the EDO that the petition is incomplete, the petition will be returned to the petitioner without prejudice to the petitioner's right to file a new petition. Correspondingly, RDB drafts the appropriate letter to the petitioner, obtains the necessary concurrences, and forwards the letter to the EDO for signature.

(c) The Commissioners are placed on distribution for any letter to a petitioner that states that a petition is deficient or that returns a petition because it is incomplete.

15.15 Petitions eligible for "fast-track" processing.

(a) Occasionally, the NRC receives a petition for rulemaking that requests an obviously meritorious amendment to the regulations. To expedite the rulemaking process, these petitions may be published initially for public comment as a proposed rule. This type of action constitutes fast-track processing and eliminates the usual step of publishing a notice of receipt of a petition that invites public comment when this additional procedural step is unnecessary. Fast-track petitions are processed by the staff according to the procedures specified in this section and in Section 15.17 of this handbook.

(b) Following a determination that a petition meets the threshold requirements of 10 CFR 2.802(c), RDB assigns the petition to the appropriate NRC staff office to determine whether the petition is eligible for fast-track processing. The NRC staff office assigns a contact person to handle the petition and makes the fast-track determination within 10 working days.

(c) The NRC may consider a petition eligible for fast-track processing if it --

(1) Proposes action granting or recognizing an exemption from requirements in 10 CFR Chapter I or granting relief from restrictions while not imposing additional burdens upon or increasing the risks to the health and safety of any segment of industry or the public;

(2) Proposes action involving interpretive rules; rules of agency organization, procedure, or practice; and rules for the orderly conduct of Commission business;

(3) Proposes action involving an amendment to 10 CFR Chapter I that is corrective or of a minor or nonpolicy nature and that does not substantially modify existing regulations;

(4) Proposes action involving --

(i) A minor safety, safeguards, or environmental issue;

(ii) An increase in NRC efficiency; or

(iii) A reduction in the regulatory burden on licensees.

(5) Proposes action involving a request already under consideration in an ongoing rulemaking proceeding. However, NRC's consideration of a request already included in an ongoing rulemaking depends on the status of the rulemaking proceeding;

(6) Proposes other action that is clearly meritorious and will not adversely affect the rights of other licensees or persons; or

(7) Contains the type of additional supporting information described in RG 10.12 and Section 15.5 of this handbook.

(d) The NRC normally will not consider a petition eligible for fast-track processing if the proposed action will --

(1) Require the preparation of an environmental impact statement;

(2) Impose new or increased reporting, application, or recordkeeping requirements subject to clearance by the Office of Management and Budget;

(3) Have a significant economic impact on a substantial number of small entities (see discussion of Regulatory Flexibility Act requirements in Sections 5.21 and 7.21 of this handbook);

(4) Have a significant impact on NRC staff and resource commitments; or

(5) Result in denial of the petition for rulemaking.

15.17 "Fast-track" processing.

(a) If the assigned office determines that the fast-track process is appropriate for a petition for rulemaking, the assigned office shall inform RDB of this decision. The assigned office begins processing the petition under fast-track procedures by developing a rulemaking plan that will initiate rulemaking action addressing the issues raised in the petition.

(b) Under fast-track procedures, the rulemaking plan must be submitted for Commission or EDO approval within 90 days of informing RDB of the decision to proceed with a rulemaking action. The assigned office shall include a schedule in the rulemaking plan that indicates its intent to expedite the completion of the rulemaking at the both the proposed rule and the final rule stage.

(c) The assigned office is responsible for implementing Commission, EDO, or Chief Financial Officer action for the rulemaking through the issuance of the final rule (See Part 1 of this handbook and MD 6.3, "The NRC Rulemaking Process").

15.19 Routine processing.

(a) If the assigned office determines that the fast-track process is not appropriate for a petition for rulemaking, the assigned office shall inform RDB of this decision. The assigned office shall also concur or provide comment on the draft notice of receipt of petition for rulemaking prepared by RDB for publication in the *Federal Register*. The notice of receipt describes the contents of the petition and allows at least 75 days for public comment. The assigned office identifies the staff contact within the assigned office that will be responsible for further action on the petition.

(b) RDB amends the notice of receipt as necessary to reflect assigned office comments. RDB then forwards the notice of receipt for OGC review and approval. RDB requests that OGC respond to this request within 5 working days. After OGC approves the notice of receipt, RDB forwards the notice of receipt to SECY for signature and transmittal to the Office of the Federal Register for publication. At the same time, RDB forwards a letter to the petitioner that transmits a copy of the notice of receipt, informs the petitioner of the petition's docket number, and indicates that RDB will forward copies of any comments received to the petitioner.

(c) The assigned office shall establish a schedule with intermediate milestones, as appropriate, and a target date for resolution of the petition. The schedule and target date are intended to cover the period from the date the notice of receipt is published in the *Federal Register* to the date on which the response indicating resolution of the petition is transmitted to the EDO. The resolution determination may be forwarded to the EDO in the entry for the petition in the Status Report on Petitions for Rulemaking prepared by RDB or in a memorandum to the EDO.

(1) A petition is considered resolved when the assigned office has determined what regulatory decision will be made concerning the petition. A petition may be resolved by

deciding to grant the petition (all or in part) and to proceed with a rulemaking action or by deciding to deny the petition. However, the resolution of a petition does not complete action on the petition. The resolution of a petition consists of the decision on the course of action the NRC will follow to complete action on the petition by either granting or denying it.

(2) Action on a petition is completed and the petition is "closed" when the NRC formally grants the petition by completing and publishing the final rule necessary to grant the petitioner's request or when the NRC denies the petition by publishing a notice of this action in the *Federal Register* and by advising the petitioner of this action in writing. In addition, action on a petition may be completed if the petition is withdrawn by the petitioner. For additional information on the closure of a petition, see Section 15.27 of this handbook.

(d) The EDO has established procedures to ensure that the resolution of a petition for rulemaking is accomplished on a timely basis. (See the memoranda from the EDO to Office Directors dated August 13, 1986, and April 6, 1988.) These procedures require that the resolution of a petition occur within 12 months from the date the notice of receipt of the petition is published in the *Federal Register*.

(1) The assigned office shall report the status of each petition for which it is responsible. These status reports are to coincide with the updating of the NRC Regulatory Agenda (NUREG-0936). The schedule for the resolution of each petition will be included in the regulatory agenda.

(2) Any proposed extension of the resolution date of a petition must be approved by the EDO in advance. The EDO reviews proposed extensions of resolution concurrently with the review of completion of rulemaking dates. RDB forwards a report to the EDO that indicates the status of each petition. The status report includes the reason for any extension of the resolution date for a petition and the proposed new resolution date.

15.21 Processing after publication for public comment.

(a) **Fast-track petition (published as a proposed rule).** At the conclusion of the comment period specified in the proposed rule, the contact person in the assigned office sends a letter to the petitioner enclosing copies of any comments that were received in response to the publication of the proposed rule in the *Federal Register*. The letter also states the initial target date for completion of NRC staff review of the comments received and development of a final rule. The assigned office is responsible for notifying the petitioner of any subsequent changes in the target date or of the contact person to whom the petition is assigned.

(b) Routine petition (notice of receipt published for comment).

(1) Shortly after the comment period specified in the *Federal Register* notice of receipt of petition (normally 75 days) closes, RDB sends a letter to the petitioner enclosing copies of any comments that have been received concerning the petition. The letter also states the initial target date for completion of NRC staff review of the petition and the name and telephone number of the contact person in the assigned office who is responsible for future action on the petition.

(2) RDB sends a memorandum to the program office that transfers the petition file and responsibility for further action to that office. That office becomes the lead office responsible for resolving and completing action on the petition. The attachments to the memorandum include--

- (i) The petition for rulemaking;
- (ii) The notice of receipt as published in the *Federal Register*, and
- (iii) Any public comments that have been received.

(3) The lead office is responsible for notifying the petitioner of any subsequent changes in the target date for completion of NRC staff review and of the contact person to whom the petition is assigned. The contact person should make an initial contact with the petitioner and

periodic contact, at a minimum of every 6 months, until action is completed on the petition.

(i) These contacts may be made by telephone, e-mail, or letter and are intended to advise the petitioner, in general terms, of the status of NRC action on the petition and of the ultimate disposition of the petition. Routine correspondence to the petitioner may be signed by an appropriate official in the responsible office. The lead office shall send copies of correspondence sent to a petitioner to RDB and to the official docket file maintained by SECY. Telephone contacts should be described in a note to the file that summarizes the discussion.

(ii) The lead office shall forward a copy to the petitioner of each Federal Register document that addresses the petition or would be a step in completing action on the petition.

(4) Any meeting between the NRC staff and the petitioner to resolve issues raised by the petition or to negotiate wording for revisions to specific provisions of the regulations in question must be publicly noticed in accordance with NRC guidelines on staff meetings open to the public in MD 3.5. The lead office is responsible for the publication of the notice of the meeting in the *Federal Register*.

(5) If a lead office determines that action on the petition has been completed through administrative measures other than publication of a *Federal Register* document, it should consult with RDB and OGC for a final determination. After it reviews actions taken during the processing of the petition, RDB will notify the assigned office if all necessary action on the petition has been completed and describe how the proceeding is to be terminated.

(c) Assistance during processing.

(1) RDB will assist with the preparation and review of *Federal Register* documents required during the processing of petitions for rulemaking.

(2) OGC will provide legal advice to the staff during the processing of petitions for rulemaking.

(d) **NRC staff response to significant actions.** The lead office is responsible for notifying RDB and OGC of any significant action or change that occurs during the processing of the petition. The lead office should include RDB and OGC in any negotiations with a petitioner that could result in understandings that could materially affect the handling and disposition of a petition. Coordination of staff plans with RDB is necessary for actions such as the potential or actual withdrawal of a petition to enable RDB to keep the EDO informed of the status of petitions for rulemaking and to describe the status of petitions accurately in the regulatory agenda.

15.23 NRC staff priority for action on a petition.

(a) RG 10.12 presents guidelines that the NRC staff should use in establishing priorities to resolve and complete action on a petition for rulemaking. The NRC staff considers the merits of each petition in its evaluation and scheduling. The degree to which information submitted in support of a petition is complete, accurate, and thorough affects how rapidly the NRC staff is able to make a determination. A petition for rulemaking submitted under 10 CFR 2.802 is generally either --

(1) A petition related to safety significance pertaining to adequate protection of public health and safety, the environment, and the common defense and security; or

(2) A petition that would reduce the regulatory burden by eliminating requirements that are marginal to safety.

(b) The NRC staff should use the following guidelines in establishing priorities for action on a petition.

(1) The safety significance of a petition is the first criterion used in scheduling NRC staff action on a petition. Petitions concerning adequate protection of public health and safety, the environment, and the common defense and security would receive immediate NRC staff attention and be given the first priority for NRC staff action. In assessing the safety significance of a petition, the NRC staff considers the technical information submitted in support of the petition, other information available to the NRC staff, and whether the suggested amendments meet the backfit criteria of 10 CFR 50.109, 70.76, 72.62, or 76.76, if applicable.

(2) If a petition is safety-neutral, that is, its implementation would have an insignificant effect on the level of protection provided to public health and safety, and the petition is supported by the type of additional information described in RG 10.12 and Section 15.5 of this handbook, the petition would be given the second priority for NRC staff action.

(3) If a petition is safety-neutral and is not supported by the type of additional information described in RG 10.12 and Section 15.5 of this handbook but meets the threshold requirements of 10 CFR 2.802(c) as described in Section 15.3 of this handbook, the petition would be given the third priority for NRC staff action.

15.25 Typical process for resolving a petition.

After the comment period on the notice of receipt closes, RDB forwards the petition file to the lead office. The lead office assumes responsibility for resolving and completing action on the petition. A petition is considered resolved when the lead office makes its regulatory decision for the petition by deciding to grant the petition (all or in part) and proceeding with a rulemaking action or by deciding to deny the petition. Section 15.27 of this handbook discusses how and when action on a petition is completed.

(a) **Working group.** During or shortly after the close of the public comment period, the lead office establishes a working group for the petition. The working group reviews the petition and the comments received and develops a recommended resolution. The working group is composed of –

- (1) A task leader from the lead office;
- (2) A member from other units within the lead office that have program responsibilities related to the rulemaking;
- (3) A member from OGC to provide legal advice and support;
- (4) A member from RDB to address procedural issues; and
- (5) A member from other staff offices, as appropriate.

(b) **Evaluating the petition.** In considering the merits of the petition, the working group reviews the petition, any supporting information presented by the petitioner, and the public comments received. In doing so, the working group considers each regulatory issue raised by the petition, the rationale for each request, and whether the requested action is warranted to improve safety or provide regulatory relief or another tangible benefit.

(c) **Petition Review Board.** The lead office establishes a petition review board to provide management approval for the course of action to be taken in resolving a petition for rulemaking. The petition review board consists of –

(1) The appropriate level of management in the lead office for approving or disapproving the course of action recommended by the working group;

(2) The director or deputy director of the division within the lead office responsible for action on the petition;

(3) The director or deputy director of other affected divisions;

(4) Appropriate representatives from other affected offices;

(5) The Assistant General Counsel for Rulemaking and Fuel Cycle or his or her designee;
and

(6) The Chief of RDB or his or her designee.

(d) **Presentations to the Petition Review Board.** The task leader will schedule a meeting of the petition review board and present the working group's recommendation to obtain management approval for the resolution.

(e) **Petition Review Board decision.** The petition review board will attempt to reach a consensus on the resolution of the petition. The petition review board may –

(1) Approve the working group's recommended resolution;

(2) Specify a different resolution;

(3) Request additional information and a further briefing; or

(4) Refer the matter to the office director or deputy director to obtain a decision, if necessary.

(f) Implementation.

(1) If the resolution is to grant the petition, the working group prepares an appropriate rulemaking plan as described in Section 3.3 of this handbook.

(2) If the resolution is to deny the petition, the working group prepares a memorandum to the EDO or a Commission paper that recommends denial. See Section 15.27(c) of this handbook for the contents of a denial package.

15.27 Completing action on a petition.

Action on a petition for rulemaking is considered complete or "closed" when the petition, or each of its parts, has been withdrawn, denied, or granted.

(a) Withdrawal of petition for rulemaking.

(1) Only the petitioner may withdraw a petition or part of a petition. However, the NRC staff may contact a petitioner if events have occurred since the petition was docketed and a notice of receipt and request for comment was published that could make the petitioner consider withdrawal. If the withdrawal is made by telephone, the contact person should request that the petitioner submit an official letter of withdrawal to provide a record of the request. If the petitioner does not submit a written request for withdrawal, the contact person should make a record of the conversation noting the date, name, and position of the person claiming to represent the petitioner. The lead office shall send a followup letter to the petitioner that confirms the withdrawal.

(2) If the petition is withdrawn, RDB, after consultation with the contact person, prepares a *Federal Register* document that informs the public of the action. The *Federal Register* document is circulated to the assigned office and OGC for concurrence before it is submitted for signature.

(b) Granting a petition for rulemaking. A petition or part of a petition is granted through issuance of a final rule that responds to the petitioner's request or other Commission action acceptable to the petitioner. See Section 19.21 of this handbook for a sample final rule that grants a petition for rulemaking.

(1) If the lead office plans to grant a petition for rulemaking, it must prepare a rulemaking plan for the contemplated rule. The rulemaking plan should contain, as a minimum, the type of information that would routinely be submitted to the petition review board, such as a summary

of public comment received on the petition and the staff's recommended course of action. The lead office may include additional information in the rulemaking plan as necessary to reflect a substantial number of significant comments or the sensitive policy or political impacts of the requested change.

(2) A complete analysis of public comment received on the petition must be included in the proposed rule that is developed and published for the action.

(3) The lead office is responsible for preparing a letter to the petitioner to be sent to the petitioner before publication of the proposed rule or the final rule in the *Federal Register* (to be signed by either the EDO, the Chief Financial Officer (CFO), or the Secretary of the Commission). The proposed or final rule must be enclosed with the letter.

(c) Denial of petition for rulemaking.

(1) A petition or part of a petition is denied through the publication of a Federal Register document and official written notification to the petitioner. If part of a petition is denied, the assigned office is responsible for processing the remaining parts of the petition until each remaining part has been withdrawn, denied, or granted. A petition must be denied even if the NRC takes other actions to address a petitioner's concerns, such as the issuance of a regulatory guide, policy statement, or legal interpretation.

(2) The assigned office prepares the following documents in the case of a denial of a petition:

(i) A memorandum to the EDO or a Commission paper.

(ii) A *Federal Register* document that provides notice of denial (to be signed by either the EDO, the CFO, or the Secretary of the Commission). The EDO and the CFO have the authority to deny petitions for rulemaking concerning issues that are within the scope of the rulemaking authority delegated to the EDO or the CFO. Denials of petitions, in whole or in part, that address major or policy issues require action by the Commission.

(iii) A letter to the petitioner to be sent to the petitioner before publication of the notice of denial in the *Federal Register* (to be signed by either the EDO, the CFO, or the Secretary of the Commission).

(iv) Congressional letters to be signed by the Director of the Office of Congressional Affairs.

(v) A draft public announcement, if appropriate.

(3) In preparing the *Federal Register* notice of denial of a petition, the assigned office shall ensure that each of the issues raised by the petitioner has been addressed. The NRC's response to each of the issues raised and the reasoning presented for denying the petition must be presented in a manner and with sufficient detail to indicate that the NRC has adequately considered each of the petitioner's requests. Each *Federal Register* document that provides notice of denial of a petition must include --

(i) A complete summary of each of the issues raised in the petition;

(ii) A summary and analysis of any public comment received;

(iii) NRC's response to each of the issues raised; and

(iv) NRC's reasons for denying the petition.

(4) When preparing a *Federal Register* document that denies a petition, the following format items are omitted from the Commission paper and *Federal Register* document --

(i) The standard statements concerning the regulatory analysis, the Paperwork Reduction Act, the Regulatory Flexibility Act, and the National Environmental Policy Act;

(ii) The authority citation; and

(iii) The list of subject index terms.

(5) See Section 19.22 of this handbook for a sample denial of a petition for rulemaking.

(d) **Incorporation of a petition for rulemaking.** When similar or related issues are involved, a petition or part of a petition may be incorporated into an ongoing rulemaking if certain factors are taken into consideration.

(1) If any of the three following factors exist, the petition or the part of a petition under review should be treated separately.

(i) Incorporation of the petition or part of the petition into an ongoing rulemaking may delay the completion of the rulemaking to an extent that is undesirable given the Commission's established priorities.

(ii) Incorporation of the petition or part of the petition into an ongoing rulemaking could delay the resolution of the petitioner's request to the point that the delay in reaching a final decision on the merits of the petition amounts to a denial of the petition.

(iii) The action to incorporate the petition occurs at a stage in the rulemaking that does not permit adequate consideration of the issue involved.

(2) If a petition is incorporated into an ongoing rulemaking, the assigned office prepares a letter to the petitioner when the decision to incorporate the petition is made. The letter should identify the rulemaking action, explain the current status of that rulemaking, and indicate that the petitioner will be informed of subsequent action concerning the proceeding.

(e) **Actions that do not complete action on a petition for rulemaking.** The administrative or procedural steps discussed in this paragraph do not grant, deny, or complete action on a petition for rulemaking or any of its parts. Action on a petition for rulemaking is completed only when the steps set out in paragraphs (a), (b), or (c) of this section have been accomplished for the petition or each of its parts.

(1) The resolution of a petition does not complete action on the petition. The resolution of a petition for rulemaking consists of a decision on the course of action the NRC will follow to complete action on the petition by either granting or denying it.

(2) Incorporation of a petition or part of a petition into an ongoing rulemaking does not cause the petition or its parts to lose the identity of a discrete agency action item that must eventually be withdrawn, denied, or granted. Incorporation, by itself, does not "grant" or "complete" action on a petition for rulemaking.

(3) The intermediate procedural or administrative steps and milestones used by NRC offices to control the processing of petitions for rulemaking (e.g., review, analysis, reports, studies, position papers, issuance of publications in the NUREG series) do not "grant," "deny," or "complete" action on a petition or its parts.

(f) Dockets and files.

(1) SECY maintains the official docket file on a petition for rulemaking. The assigned office should send a copy of all petition-related documents for inclusion in the official docket to SECY through the Agencywide Documents Access and Management System. The assigned office should also send a paper copy of petition-related documents to RDB so that RDB can monitor the current status of each ongoing action.

(2) RDB maintains a file of currently active petitions for rulemaking. Documents concerning current petitions and petitions that have been completed through action by the EDO or the Commission are published in the *NRC Rules and Regulations*. Questions concerning the status of any petition for rulemaking may be directed to RDB (415-7163).