

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

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To: NRC Management Directives Custodians

Subject: Transmittal of New Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions"

Purpose: Directive and Handbook 8.11 are being revised in their entirety to include the Commission's directive in COMIS-95-002, dated May 19, 1995, and to incorporate NRC comments from the Offices of Nuclear Reactor Regulation and Enforcement.

Office and Division of Origin: Office of Nuclear Reactor Regulation
Division of Reactor Projects I/II

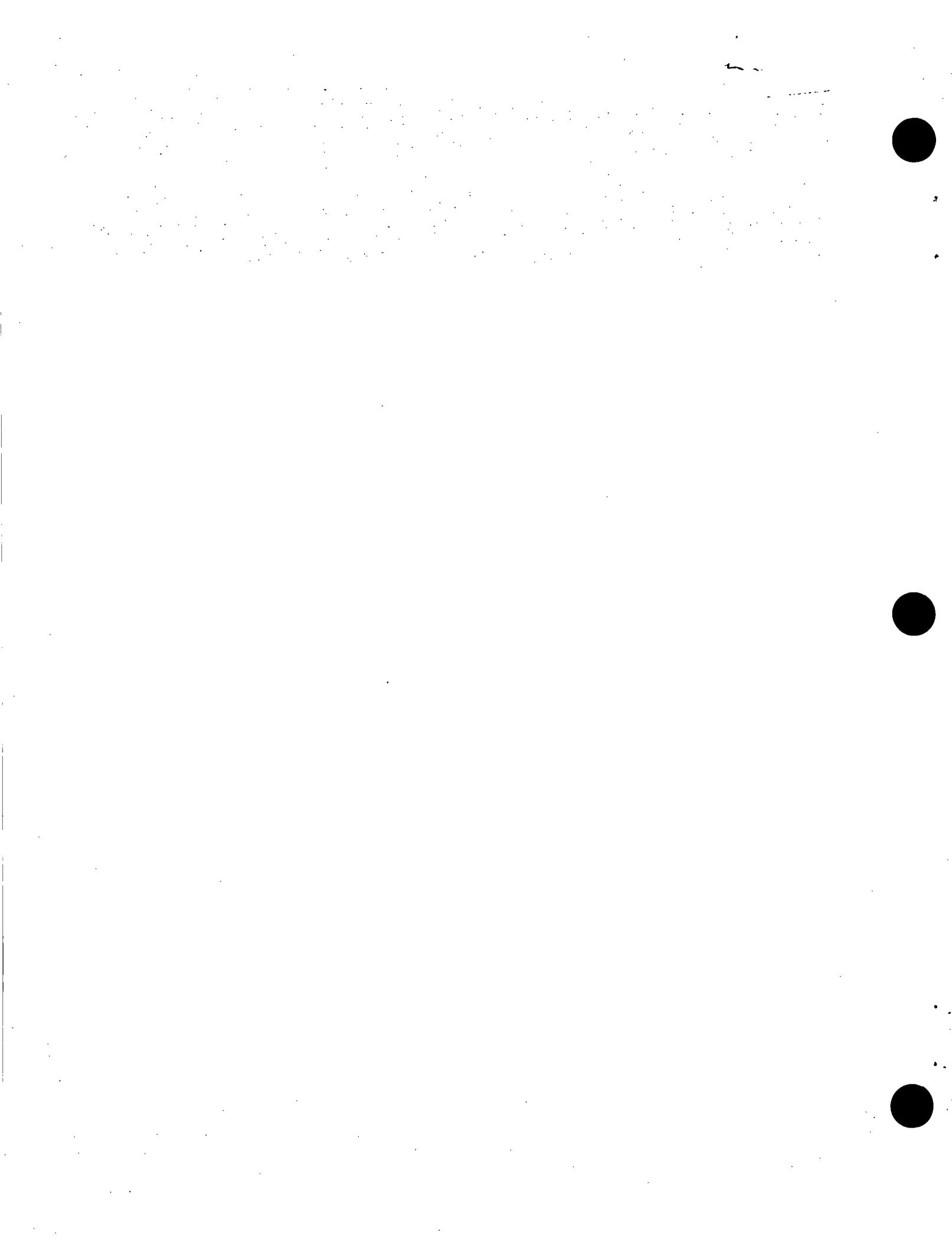
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Volume: 8 Licensee Oversight Programs

Directive: 8.11 "Review Process for 10 CFR 2.206 Petitions"

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Review Process for 10 CFR 2.206 Petitions

***Directive
8.11***



**Volume 8, Licensee Oversight Programs
Review Process for 10 CFR 2.206 Petitions
Directive 8.11**

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U. S. Nuclear Regulatory Commission

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NRR

Review Process for 10 CFR 2.206 Petitions Directive 8.11

Policy

(8.11-01)

It is the policy of the U.S. Nuclear Regulatory Commission under Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) to provide members of the public with the means to request action to enforce NRC requirements (see Part III(A) of Handbook 8.11). The Commission may deny or grant a request for enforcement action in whole or in part, and may take action which satisfies the safety concerns raised by the request, but which is not necessarily enforcement action. Requests that raise health and safety issues* without requesting enforcement action will be reviewed by means other than the 10 CFR 2.206 process. It is also the policy of NRC to ensure prompt and appropriate action upon receipt of petitions under 10 CFR 2.206, and to provide for public participation in NRC's decision-making process on 10 CFR 2.206 petitions (hereinafter referred to as "petitions").

Objectives

(8.11-02)

- To provide the public with a means to bring to the NRC's attention potential health and safety issues requiring NRC enforcement action. (021)
- To ensure the public health and safety through the prompt and thorough evaluation of any potential safety problem addressed by a petition filed under 10 CFR 2.206. (022)
- To provide for meaningful participation by the petitioners and the public in the activities of NRC and the licensees related to the 10 CFR 2.206 petition process. (023)

*This term does not exclude issues related to other types of NRC regulatory requirements, such as environmental or antitrust requirements applicable to licensees.

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Objectives

(8.11-02) (continued)

- To ensure effective communication with the petitioner on the status of the petition, including provision of relevant documents and notification of NRC and licensee interactions on the petition. (024)

Organizational Responsibilities and Delegations of Authority

(8.11-03)

Executive Director for Operations (EDO)

(031)

Receives all petitions filed under 10 CFR 2.206.

Office of the Executive Director for Operations (OEDO)

(032)

- Assigns action for each request received under 10 CFR 2.206 and forwards it to the Office of the General Counsel (OGC) for initial review. After OGC's initial review, transfers the action to the appropriate program office. As necessary, consults with OGC to determine whether the incoming correspondence should be treated as a request under 10 CFR 2.206. (a)
- Establishes the initial schedule for completion of the acknowledgment letter and the director's decision, and approves each request for an extension. (b)
- Forwards notification to the Commission that a 2.206 petition meets the criteria for an informal public hearing. (c)

Office of the General Counsel (OGC)

(033)

- Performs initial review of the request to confirm that the petition should be processed under 10 CFR 2.206. Identifies the information that the NRC office needs to include in a response to a request for immediate action. If the request should be handled

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Office of the General Counsel (OGC)
(033) (continued)

under 10 CFR 2.206, prepares a draft *Federal Register* notice and a draft letter of acknowledgment to the petitioner. Forwards these documents to the assigned program office director. (a)

- Advises on whether criteria for informal public hearings are met. (b)
- Reviews and indicates whether it has a legal objection to the issuance of all 2.206 acknowledgment letters and director's decisions. (c)
- Coordinates with the program office in drafting portions of director's decisions addressing legal issues raised by the petition. (d)
- Reviews all correspondence written in connection with the petition for legal sufficiency. (e)
- Gives advice to the EDO, office directors, and staff on all 2.206 matters. (f)

**Director, Office of Nuclear Reactor
Regulation (NRR)**
(034)

Provides the EDO a monthly status report of all NRC pending petitions.

**Director, Office of Information
Resources Management (IRM)**
(035)

Provides electronic bulletin board system (BBS) hardware, software, and communication services support for making information publicly available on the status of the petitions.

Office Directors
(036)

- Have overall responsibility for assigned petitions. (a)
- Approve or sign all documents pertaining to 2.206 actions. (b)

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Office Directors
(036) (continued)

- In consultation with OGC and OEDO, determine whether to offer an opportunity for an informal public hearing. (c)
- Issue a monthly status report to the Director, NRR, on all petitions and ensure that this information is made publicly available in the Public Document Room and on the electronic BBS. Office directors will ensure that "sensitive" information that may need to be protected from disclosure will not be included in the monthly report. This information includes safeguards or facility security information, proprietary or confidential commercial information, or information relating to an ongoing investigation of wrongdoing or a pending enforcement action, or information about referral of matters to the Department of Justice. (d)
- Concur, as appropriate, with each extension request from the petition manager and forward the extension request to the OEDO for approval. (e)
- Notify the Commission through the EDO once a determination is made that a 2.206 petition meets the criteria for an opportunity for an informal public hearing. (f)
- Ensure that the Office of Investigations (OI) or the Office of the Inspector General (OIG) is promptly notified of any allegations of suspected wrongdoing by the licensees or NRC contained in any petitions they may receive. Ensure that the priority assigned to the OI investigation is in accordance with Commission-approved guidance specified in Management Directive (MD) 8.8, "Management of Allegations." (g)
- Obtain Office of Enforcement (OE) review on all proposed director's decisions that involve compliance issues or alleged violations. (h)
- Ensure in the director's decision that the evaluation of the petition adequately reflects information presented at the informal public hearing to the extent that such information was useful. (i)

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Office Directors
(036) (continued)

- When “Notification of Issuance of a Director’s Decision” is formally made to the Secretary of the Commission, ensure that the notification also addresses that the petition met the criteria for an informal public hearing where that is the case, indicates whether a hearing was held, and provides any specific results of the informal public hearing (new information presented, agreements reached with petitioner, etc.). The additional notifications to the Commission serve to highlight the heightened level of interest in the specific 2.206 petition and its special consideration during its evaluation. (j)

Regional Administrators
(037)

- Refer any 2.206 petitions they may receive to the EDO. (a)
- Ensure that OI or OIG is promptly notified of any allegations of suspected wrongdoing contained in petitions they may receive. (b)
- Ensure that the priority assigned to an OI or OIG investigation is in accordance with Commission-approved guidance specified in MD 8.8. (c)
- As needed, provide support and information for the preparation of an office director’s response to a 2.206 petition. (d)

Petition Manager
(038)

- Coordinates the 2.206 package, serves as the NRC point of contact with the petitioner, works closely with the OGC case attorney, and monitors the progress of any OI investigation and related enforcement actions. (a)
- Prepares the initial draft of the decision on the petition for the office director’s consideration, including coordination with the appropriate staff supporting the review. (b)
- Ensures appropriate documentation of all 10 CFR 2.206 petition determinations, including the determination on whether an informal public hearing is offered. (c)

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Applicability
(8.11-04)

The policy and guidance in this directive and handbook apply to all NRC employees.

Handbook
(8.11-05)

Handbook 8.11 specifies the procedures for the review process for petitions.

Definitions
(8.11-06)

A 10 CFR 2.206 Petition. A written request filed by any person to institute a proceeding to modify, suspend, or revoke a license, or for any other enforcement action that may be proper and that meets the criteria for review under 10 CFR 2.206 (see Part III of Handbook 8.11).

Informal Public Hearing. The public meeting held by the NRC to provide an opportunity to the petitioner to supply information to assist the NRC staff in the evaluation of petitions that raise new significant safety issues, as defined in Part III (C)(3)(b) of Handbook 8.11, or that provide new information or approaches for the evaluation of significant safety issues previously evaluated.

Petition Manager. The individual staff member assigned to coordinate NRC's response to the petition.

References
(8.11-07)

Code of Federal Regulations —

10 CFR 2.206, "Requests for Action Under this Subpart."

10 CFR 2.790, "Public Inspections, Exemptions, Requests for Withholding."

"General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600.

Investigative Procedures Manual (Office of Investigations), revised January 1989.

Memorandum of Understanding Between the NRC and the Department of Justice, December 14, 1988.

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References

(8.11-07) (continued)

- NRC Enforcement Manual (Office of Enforcement).
- NRC Management Directive 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff."
 - 8.8, "Management of Allegations."
- Nuclear Regulatory Commission Issuances, published quarterly as NUREG-0750.

Review Process for 10 CFR 2.206 Petitions

***Handbook
8.11***



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Part I

Introduction

Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) has been a part of the Commission's regulatory framework since the Commission was established in 1975. Section 2.206 permits any person to file a petition to request that the Commission institute a proceeding to take enforcement action. (A)

Section 2.206 provides a formal procedure that allows any person to file a request to institute such a proceeding and requires that the petition be submitted in writing and provide sufficient grounds for taking the proposed action. General opposition to nuclear power or a general assertion of a safety problem, without supporting facts, should not be treated as a formal petition under 10 CFR 2.206. These requests should be treated as routine correspondence. The petition must request that a license be modified, suspended, or revoked, or that other appropriate enforcement action be taken and must provide sufficient facts that constitute the bases for taking the particular action. (B)

After NRC receives a petition, it is assigned to the director of the appropriate program office for evaluation and response. The filing of a petition does not automatically initiate a hearing and, in the past, hearings associated with 2.206 petitions have been rare. The official response is a written decision of the office director that addresses the issues raised in the petition. The director's decision can grant, partially grant, or deny the petition. The Commission may, on its own initiative, review the director's decision to determine if the director has abused his or her discretion, but no petition or other request for Commission review of the director's decision will be entertained by the Commission. (C)

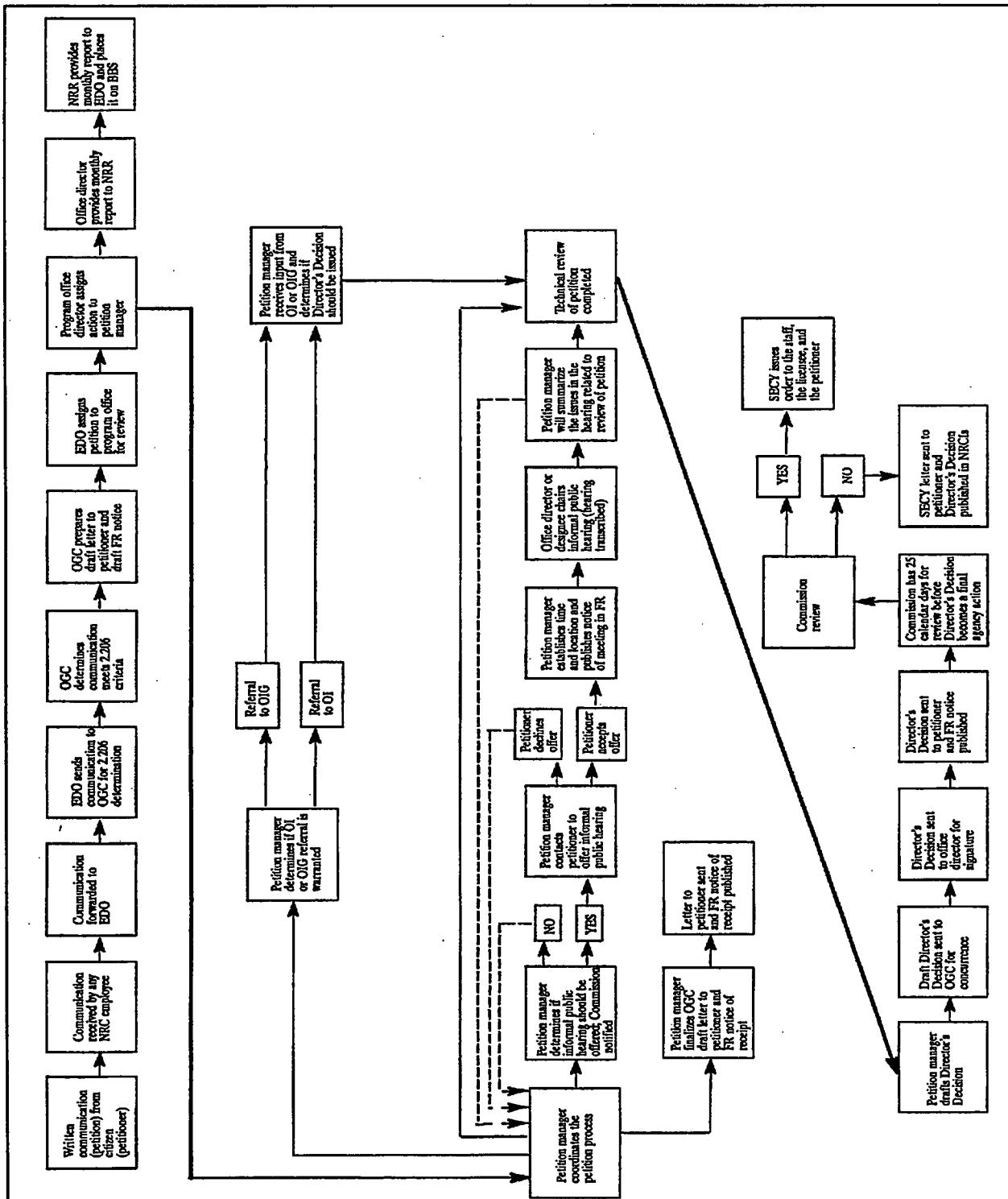
Historically, the NRC has granted petitions in whole or in part on only about 10 percent of petitions submitted to the agency. This practice has led to a longstanding public perception that the NRC was unresponsive to 2.206 petitions. Therefore, because of the importance of the 2.206 process as a mechanism for the public to bring concerns to the NRC's attention and seek

Introduction (continued)

enforcement actions regarding NRC-licensed activities, in concert with the Commission's desire to enhance public participation in the Commission's decisionmaking process, the Commission decided in 1993 to reevaluate the 2.206 process for the first time since it was implemented in 1975. A public workshop was held in July 1993, and participants included representatives of citizens' groups, industry, and the Government. The workshop discussions and written comments formed the basis for NRC's reassessment of the 2.206 process. (D)

As a result, this handbook details the new procedures for increasing meaningful participation of the petitioner in the 2.206 process, improving communication between NRC and the petitioner, providing petitioners copies of licensee responses to NRC requests for information, and providing petitioners an opportunity to participate in NRC-licensee meetings. The figure on the page 3 illustrates the review process for 2.206 petitions. An electronic bulletin board system (BBS) will provide information on the up-to-date status of pending 2.206 petitions, director's decisions issued, and notices of informal public hearing. BBS can be accessed by petitioners and the general public by a toll-free telephone number using a personal computer and modem. A provision will also be made for offering the petitioners opportunity for informal public hearings on petitions that meet the criteria specified in Part III of this handbook. (E)

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Process for Reviewing Petitions Submitted Under 10 CFR 2.206

**Approved: September 23, 1994
(Revised: December 12, 1995)**

Part II

Initial Staff Actions

Acknowledgment of the Request and Preparation of the *Federal Register* Notice (A)

Office of the General Counsel (OGC) (1)

After reviewing the request, OGC will—

- Make a determination as to whether the request meets the criteria of 10 CFR 2.206. If the petition meets the criteria of a 2.206 petition, OGC will prepare a memorandum for the assigned office director. (a)
- Include with the memorandum a draft letter of acknowledgment to the petitioner. (b)
- Identify in the memorandum the information that the NRC office needs to include in a response to a request for immediate action. (c)
- Identify in the memorandum the OGC contact. (d)
- Include with the memorandum a draft *Federal Register* notice. (e)

The Executive Director for Operations (EDO) (2)

The EDO assigns the petition to a program office for action.

Acknowledgment of the Request and Preparation of the Federal Register Notice (A) (continued)

Office Directors (3)

The assigned office director will sign and issue the final version of the acknowledgment letter and the *Federal Register* notice by the date specified for the action. The action will remain active until the final director's decision is made. (a)

The office director will ensure that the appropriate licensee is sent a copy of the acknowledgment letter and a copy of the incoming request at the same time as the petitioner. If appropriate, the licensee will be requested to provide a response to the NRC on the issues specified in the petition, usually within 60 days. When an unannounced technical inspection or an Office of Investigations (OI) investigation is involved, the staff will not release information that (1) would indicate to the licensee or the public that an unannounced technical inspection or an OI investigation will be undertaken or (2) would undermine the inspection or the investigation. The decision to release information to the licensee in this case shall be made by the director of the assigned office. If the licensee is to be asked to respond to the petition, inform the petitioner in the acknowledgment letter and indicate that a copy of the licensee's response will be forwarded to the petitioner when it is received. All acknowledgment letters are to be signed by the office director. (b)

In addition, on each petition, the office director should consider the need to ensure, as much as practicable, objectivity in the evaluation of the petition when assigning personnel to review it. The director will give special attention to those petitions that would be evaluated by the same staff who previously addressed the matter that is again at issue. In the director's decision, the office director will ensure that the evaluation addresses and is responsive to the concerns and issues expressed in the petition. (c)

Petition Manager (4)

The petition manager should ensure that the petitioner receives copies of all NRC correspondence with the licensee pertaining to the petition by placing the petitioner on distribution for all relevant NRC

Acknowledgment of the Request and Preparation of the *Federal Register* Notice (A) (continued)

Petition Manager (4) (continued)

correspondence to the licensee. Additionally, the licensee should be encouraged to place the petitioner on distribution for any responses to the NRC pertaining to the petition. If the licensee is asked to respond, the petition manager should advise the licensee that the NRC intends to place the licensee's response in the Public Document Room (PDR) and provide the response to the petitioner. Unless necessary for NRC's proper evaluation of the petition, the licensee should avoid using proprietary or personal privacy information that requires protection from public disclosure. If such information is necessary to properly respond to the petition, the NRC will protect the information in accordance with 10 CFR 2.790. (a)

The petition manager should ensure that the petitioner is also placed on distribution for other NRC correspondence relating to the issues raised in the petition, including relevant generic letters or bulletins that are issued, during the pendency of the NRC's consideration of the petition. This recommendation does not apply to NRC correspondence or documentation related to an OI investigation, which will not be released outside NRC channels without the approval of the Director, OI. (b)

CAUTION: Before issuing the acknowledgment letter, the petition manager should contact the petitioner and inform him or her that the 2.206 petition process is a public process in which the petition and all the information in it will be made public. If the petitioner desires that his or her identity and petition not be made public, the petitioner should be advised that, because of its public nature, the 2.206 process cannot provide protection of the petitioner's identity. The petitioner should be advised that the matter will be handled as an allegation, and that the petitioner should withdraw his or her petition in writing.

Acknowledgment of the Request and Preparation of the *Federal Register* Notice (A) (continued)

Petition Manager (4) (continued)

If the petition contains a request for immediate enforcement action by the NRC, such as a request for immediate suspension of facility operation until final action is taken on the request, the acknowledgment letter must respond to the immediate action requested. If the immediate action is denied, the staff must explain the basis for the denial in the acknowledgment letter. The petitioner will not be advised of any wrongdoing investigation being conducted by OI. (c)

Updating the Status of Petitions on the Electronic Bulletin Board System (BBS) (B)

The assigned office director or designee will provide information monthly on the status of each open petition to the Director, Office of Nuclear Reactor Regulation (NRR) or a designee. This information will be provided upon receipt of the petition package from OGC and updated during the first week of each month. The monthly updates will list all correspondence on the petition and provide a brief statement on the status of the petition. The Director, NRR, will combine all reports and prepare a monthly status report of all open petitions to the EDO. (1)

The monthly EDO status report on all open petitions will be placed on the BBS. A summary of all petitions closed for each calendar year will also be placed on the BBS. (2)

The final version of the director's decision will be placed on the BBS. (3)

If the information on the status of the petition is "sensitive" information that may need to be protected from disclosure, such as safeguards or facility security information, proprietary or confidential commercial information, information relating to an ongoing investigation of wrongdoing or enforcement actions under development, or information about referral of matters to the Department of Justice, the petition manager should ensure that this information is protected from disclosure and not placed on the BBS. (4)

Part III

Criteria for Petition Evaluation

The following criteria should be used for determining whether a petition should be considered under 10 CFR 2.206, if similar petitions should be consolidated, and if informal public hearings should be offered.

Criteria for Reviewing Petitions Under 10 CFR 2.206 (A)

A petition will be reviewed under the requirements of 10 CFR 2.206, whether specifically cited or not, if the request meets all of the following criteria: (1)

- The request is for enforcement action: a request that NRC impose requirements by order; or issue an order modifying, suspending, or revoking a license; or issue a notice of violation, with or without a proposed civil penalty. (a)
- The request must specify the enforcement action requested and the facts that constitute the bases for taking the particular action. The request is not simply a general statement of opposition to nuclear power or a general assertion without supporting facts (e.g., the quality assurance at the facility is inadequate). The petitioner must provide some element of support beyond the bare allegation. The facts stated in support must be credible and sufficient to warrant further inquiry. (b)
- The request is not used to avoid or circumvent an ongoing proceeding in which the petitioner is or could be a party. (c)

A petition will not be reviewed under the requirements of 10 CFR 2.206, whether specifically cited or not, in the following circumstances: (2)

Criteria for Reviewing Petitions Under 10 CFR 2.206 (A) (continued)

- Incoming correspondence does not ask for an enforcement action against a licensee or fails to provide sufficient supporting facts to constitute a 2.206 petition but simply alleges wrongdoing, violations of NRC regulations, or existence of safety concerns. These assertions will be treated as allegations and referred for appropriate action in accordance with Management Directive (MD) 8.8. (a)

CAUTION: If a petitioner's request does not meet the criteria for consideration under 10 CFR 2.206, the petition manager will write to the petitioner explaining why the request is not being reviewed under 10 CFR 2.206.

- A request to reconsider or reopen a previous enforcement action will not be treated as a 2.206 petition if it does not present significant new information that indicates that the previous enforcement action was in error as provided in the enforcement policy (NUREG-1600). (b)
- A request under 10 CFR 2.206 should be distinguished from a request to deny a pending license application or amendment. The latter type of request should initially be addressed within the relevant licensing action, not under 10 CFR 2.206. (c)

Criteria for Consolidating Petitions (B)

In general, all requests submitted by different individuals will be treated and evaluated separately. When two or more petitions request the same action, specify the same bases, provide adequate supporting information, and are submitted at about the same time, the staff will consider the benefits of consolidating the petitions against the potential of diluting the importance of any petition. If the staff believes that consolidation is appropriate, the assigned office director will determine whether to consolidate the petitions.

Criteria for Informal Public Hearings (C)

For petitions meeting the criteria specified in this part, the NRC will offer the petitioner an opportunity for an informal public hearing. An

Criteria for Informal Public Hearings (C) (continued)

informal public hearing will not only be a resource for the NRC in evaluating the petition, but also will afford the petitioner, the licensee, and the public an opportunity for enhanced involvement in the Commission's decisionmaking process. The criteria for selecting the petitions for informal public hearings focus on petitions that raise new significant safety issues or provide new information or approaches on significant safety issues previously evaluated. The offer of an informal public hearing will be based on a determination that the criteria are met. The staff will offer the petitioner an opportunity for an informal public hearing and, if accepted, issue a *Federal Register* notice notifying the public of the hearing. Petitions not initially offered for informal public hearings may, after further review, be deemed candidates for informal public hearings. An NRC determination to offer an opportunity for a public hearing will be expeditiously communicated to the petitioner. (1)

The informal public hearing is not automatic and will not be offered simply at the petitioner's request. If the NRC offers the petitioner the opportunity for an informal public hearing, the petitioner then has the option to accept or reject the offer. If the petitioner rejects the offer, an informal public hearing will not be conducted and the review of the petition will continue. If the petitioner accepts the offer for an informal public hearing, the licensee will be requested to fully participate in the hearing. (2)

After a petition has been accepted for review under 10 CFR 2.206, the staff will determine if an opportunity for an informal public hearing is to be offered to the petitioner according to the following criteria. The first element listed below (a) must always be met and either one of the other following elements (b) or (c) must also be met. (3)

- Informal public hearings will not be held if to do so will compromise "sensitive" information that may need to be protected from disclosure, such as safeguards or facility security information, proprietary or confidential commercial information, or information relating to an ongoing investigation of wrongdoing. The petition manager should ensure that an informal public hearing will not compromise the protection of this information before offering the petitioner the opportunity for an informal public hearing. (a)

Criteria for Informal Public Hearings (C) (continued)

- The petition provides new information with reasonable supporting facts that raises the potential for a significant safety issue. For *nuclear reactors*, a significant safety issue is an issue that, if validated, could lead to an occupational exposure dose equivalent exceeding 10 rem, could cause significant core damage, or could otherwise result in a significant reduction of protection of public health and safety. For *nuclear materials licensees*, a significant safety issue is an issue that, if validated, could result in an occupational exposure dose equivalent exceeding 10 rem, or could otherwise result in a significant reduction of protection of public health and safety. The information is considered “new” if one the following applies: (b)
 - The petition presents a significant safety issue not previously evaluated by the staff. (i)
 - The petition presents new information on a significant safety issue previously evaluated. (ii)
 - The petition presents a new approach for evaluating a significant safety issue previously evaluated and, on preliminary assessment, the new approach appears to have merit and to warrant reevaluation of a significant safety issue previously evaluated. (iii)
- The petition alleges violations of NRC requirements involving a significant safety issue (which usually would include nearly all Severity Level I, most Severity Level II, and possibly some Severity Level III violations under the Commission’s enforcement policy) for which new information or a new approach has been provided and presents reasonable supporting facts that tend to establish that the violation occurred. (c)

Part IV

Procedures for Conducting an Informal Public Hearing

The informal public hearing is not automatic and will not be offered simply at the petitioner's request. The NRC staff evaluates the merits of the petition and determines whether it meets the criteria for an informal public hearing. If the petition meets the criteria, the NRC will offer the petitioner an opportunity for an informal public hearing. The petitioner then has the option to accept or reject the offer. If the petitioner rejects the offer, an informal public hearing will not be conducted and the review of the petition will continue. If the petitioner accepts the offer for an informal public hearing, the licensee will be requested to fully participate in the meeting to present its position. (A)

After the staff determines that a petition meets the criteria for an informal public hearing, set forth in Part III (C) of this handbook, and the petitioner accepts the offer of an informal public hearing, the following procedures will govern the hearing process. (B)

- The NRC petition manager will contact the petitioner to schedule a mutually agreeable date for the hearing. The petition manager also will coordinate the schedules and dates with the licensee. (1)
- As much as practicable, the meeting location should be selected on the basis of the appropriate geographical area covered by the petition. For example, if a single facility is the focal point of the petition, the informal public hearing should be held in the vicinity of the facility; if more than one facility is covered but the focal point of the petition concerns facilities within a single region, the informal public hearing should be held in that region; if the focal point of a petition raises generic issues covering facilities nationwide, the informal public hearing should be held in the Washington, D.C., area. (2)

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- To the extent practicable, informal public hearings held outside the Washington, D.C., area should be scheduled for evening hours to facilitate public attendance. As a general rule, the hearing should not exceed 3 hours. (3)
- The NRC will publish a notice of the informal public hearing in the *Federal Register* 30 days in advance of the hearing. When published in the *Federal Register*, the notice also will be placed on the bulletin board system (BBS) for access by those members of the public who use the BBS to obtain information on the status of the petition. (4)
- The petition manager also will ensure that the scheduled informal public hearing is included in the Public Meeting Notice System, as provided in Management Directive (MD) 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff," and will notify the Office of Public Affairs. (5)
- All informal public hearings will be transcribed, and the transcript will be publicly available. (6)
- The informal public hearing will be chaired by the NRC office director responsible for addressing the petition, or by a designee. (7)
- The informal public hearing will be a public meeting, the purpose of which is to obtain additional information from the petitioner, the licensee, and the public for NRC staff use in evaluating the petition. It is not a forum for the staff to offer any preliminary decisions on the evaluation of the petition. The Chairperson will have the final authority to determine the conduct of the hearing. (8)
- The meeting format will be as follows: (9)
 - The NRC staff representative who chairs the meeting will provide a brief summary of the 2.206 process, the purpose of the informal public hearing, and the petition. (a)
 - The petitioner will then be allowed a reasonable amount of time (approximately 30 minutes) to articulate the basis for the petition. (b)
 - The NRC staff will then have an opportunity to ask the petitioner questions for purposes of clarification. (c)
 - The licensee will then be allowed a reasonable amount of time (approximately 30 minutes) to address the issues raised in the petition. (d)

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Handbook 8.11 Part IV**

- The NRC staff will then have an opportunity to ask the licensee questions for purposes of clarification. (e)
- If necessary, time will be provided to allow a general discussion by the NRC staff, the petitioner, and the licensee on the issues raised in the presentation. (f)
- An opportunity for public comment will be provided before the conclusion of the hearing. (g)

Part V

Staff Actions

General (A)

After receiving the 2.206 petition, the staff should immediately begin to evaluate the petition and determine if the schedule is reasonable. A goal is to issue the director's decision or partial director's decision within 120 days from the date of issuance of the acknowledgment letter. This date is tracked by the Office of the Executive Director for Operations (OEDO), and any change of the date requires approval by the OEDO. When more time is needed (e.g., when an Office of Investigations (OI) investigation is required or an informal public hearing is indicated), the assigned office director should determine the need for an extension of the schedule and will request the extension from the OEDO. If this goal cannot be met, then the office director or a designee will promptly contact the petitioner explaining the reason(s) for the delay and will maintain a record of such a contact. If there is a suspicion of wrongdoing on the part of licensees, their contractors, or their vendors, OI should be notified immediately. If there is a suspicion of wrongdoing involving an NRC employee, NRC contractors, or NRC vendors, the Office of the Inspector General (OIG) should be notified immediately. (1)

The petition manager is responsible for coordinating all information required from the professional staff within his or her organization and other organizations, and from OI and/or OIG if a wrongdoing issue is under consideration, and for working closely with the Office of the General Counsel (OGC). In addition, the petition manager is responsible for ensuring that the petitioner is notified at least every 60 days of the status of the petition, or more frequently if significant actions occur. The status report to the petitioner will not indicate (a) an OI investigation is underway, unless approved by the Director, OI; (b) the matter has been referred to the Department of Justice (DOJ); or (c) the specific enforcement action taken regarding the matter under consideration. (2)

Director's Decision (B)

The staff may prepare a partial director's decision when some of the issues associated with the 10 CFR 2.206 petition are resolved in advance of other issues and if significant schedule delays are anticipated before resolution of the entire petition. If a wrongdoing investigation is being conducted in relation to the petition, the staff will consider the results of the OI investigation, if available, in completing its action on the petition. (1)

Management Directive (MD) 8.8, "Management of Allegations," provides agency policy with regard to notification of OI of wrongdoing matters, as well as initiating, prioritizing, and terminating investigations. The petition manager should become familiar with the current version of MD 8.8 and follow the policy outlined therein when dealing with issues requiring OI investigations. (2)

All information related to an OI wrongdoing investigation, or even the fact that an investigation is being conducted, will receive limited distribution within NRC and will not be released outside NRC without the approval of the Director, OI. Within NRC, access to this information should be limited to those having a "need-to-know." Regarding a 2.206 petition, the relevant program office director will maintain copies of any documents required, but no copies of documents related to an OI investigation will be placed in the docket file, the Nuclear Documents System (NUDOCS), the Public Document Room (PDR), or the Local Public Document Room (LPDR) without the approval of the Director, OI. (3)

Before writing a decision, the petition manager will prepare an outline and discuss the intended approach and format with OGC. OGC will provide, upon request, several issued director's decisions as models for the appropriate level of detail and format. If appropriate, before completing an entire decision on all issues, the petition manager will submit a partial decision on one or several issues for review by office management and OGC. If a different approach, format, or level of detail is appropriate, these issues can be resolved at this early stage rather than after the entire decision is prepared. (4)

Director's Decision (B) (continued)

When all 2.206 concerns have been satisfactorily addressed, the petition manager will submit a completed decision to his or her management for review. After management's review, the petition manager will incorporate any proposed revisions in the decision. If the decision is based on or references a completed OI investigation, OI must concur with the accuracy and characterization of the OI findings and conclusions that are used in the decision before OGC reviews it. The petition manager will submit a complete decision for OGC management's legal review. Two weeks will be allowed for OGC management to complete its initial legal review, with additional time allowed depending on the length of the decision and its complexity. (5)

The petition manager will incorporate revisions to address OGC's comments and submit the revised decision to his or her management and OGC management for final review. Eight working days will be allowed for final management review by OGC and the finding of "no legal objection" by OGC before the decision is signed by the assigned office director. (6)

Any differences between the assigned office and OGC regarding the scope, format, level of detail, or other issues must be identified and resolved early in the process of preparing a decision. If the petition manager and the OGC case attorney cannot resolve a matter, it should be presented to the management of the assigned office and OGC for resolution. (7)

No changes will be made to the package after the office director has approved and/or signed all documents in the package. (8)

The petition manager will prepare and submit to the office director or designee a monthly status report on 2.206 petitions that will be made available in the PDR and placed on the electronic bulletin board system (BBS). All office directors assigned the petitions will prepare a monthly report of the status of pending petitions and will forward it to the Director, Office of Nuclear Reactor Regulation (NRR). The Director, NRR, will combine all reports in a monthly report to the EDO, and will provide a copy of the monthly report to the BBS operator for placement on the BBS. (9)

Director's Decision (B) (continued)

If the information on the status of the petition is "sensitive" information that may need to be protected from disclosure, such as safeguards or facility security information, proprietary or confidential commercial information, information relating to an ongoing investigation of wrongdoing or enforcement actions under development, or information about referral of matters to the Department of Justice, the petition manager should ensure that this information is protected from disclosure and not included in the monthly report. (10)

The petition manager will obtain the Office of Enforcement (OE) management's review of the draft director's decision for potential enforcement actions that are under consideration when allegation or compliance issues are involved. (11)

Granting of the Petition (C)

Upon the granting of a portion of the petition, the assigned office should prepare a "Director's Decision Under 10 CFR 2.206" that explains the bases upon which the petition has been granted and identifies the actions that the staff has taken or will take to grant that portion of the petition. The Commission may not only grant a request for enforcement action in whole or in part but also may take action to satisfy the safety concerns raised by the petition, although such action is not necessarily enforcement action. A petition will be characterized as being granted in part when NRC did not grant the petition as asked but took other action to address the underlying safety problem or when some of the issues cannot be completed without significant delays in the schedule. If the petition is granted in full, a director's decision will be issued to explain the bases for granting the petition and will state that the Commission's action resulting from the director's decision is outlined in the Commission's order or other appropriate communication as provided in the rules specified in 10 CFR 2.200. (1)

If the request is granted by issuing an order, the petition manager will prepare a letter to transmit the order to the licensee. The petition manager will prepare another letter to explain to the petitioner that the petition has been granted and will enclose a copy of the order. (2)

Denial of the Petition (D)

Upon denial of the petition in whole or in part, the assigned office should prepare a "Director's Decision Under 10 CFR 2.206" that explains the basis for the denial and discusses all matters raised by the petitioner in support of the request. The office director will send a letter to the petitioner transmitting the director's decision, along with a *Federal Register* notice explaining that the request has been denied. Copies to the licensee and individuals on the service list will be dispatched simultaneously with the petitioner's copy.

CAUTION: If an OI investigation is completed either before granting or denial of the petition, the petition manager should contact OI and OE to coordinate NRC's actions when the wrongdoing matter has been referred to the DOJ. It may be necessary to withhold action on the petition in keeping with the memorandum of understanding with DOJ.

Distribution (E)

A decision under 10 CFR 2.206 consists of a letter to the petitioner, the director's decision, and the *Federal Register* notice. The petition manager will contact the OGC enforcement attorney's office to obtain a director's decision number (i.e., DD-YEAR-00). A director's decision number is assigned to each director's decision in numerical sequence. This number is typed on the letter to the petitioner, the director's decision, and the *Federal Register* notice. (1)

The *Federal Register* notice will be signed by the assigned office director and will include the complete text of the director's decision or cite that the director's decision will be available on BBS. After the *Federal Register* notice is signed, it should be forwarded to the Rules Review and Directives Branch, Office of Administration (RRDB/ADM), for transmittal to the Office of the Federal Register for publication. (2)

The package for publication must include the signed original document, five paper copies, and a copy of the document on a 3.5-inch diskette in WordPerfect. Questions regarding format or preparation of the notice should be directed to RRDB on (301)415-7158. (3)

The administrative staff of the assigned office will review the 10 CFR 2.206 package before it is dispatched and will properly distribute copies. The administrative staff also will perform the following actions on the day the director's decision is issued: (4)

Distribution (E) (continued)

- Telephone the Docketing and Services Branch, Office of the Secretary of the Commission (SECY), to advise the staff that the director's decision has been issued. (a)
- Immediately **handcarry** the listed material to the following offices: (b)
 - Docketing and Services Branch, SECY (i)
 - Five copies of the director's decision.
 - Two courtesy copies of the entire decision package. The decision package includes the publicly available documents relied on or referenced in the director's decision.
 - Two copies of the incoming petition.
 - Deputy Assistant General Counsel for Enforcement, OGC (ii)
 - One copy of the director's decision.

These requirements must be fulfilled promptly because after filing the director's decision with SECY, the Commission has 25 calendar days from the date of issuance to determine whether or not the director's decision should be reviewed. (5)

The final version of the director's decision is then copied onto a diskette in WordPerfect. This diskette and two paper copies of the signed director's decision are sent to the NRC Issuances (NRCI) Project Officer, Electronic Publishing Section, Publications Branch, Office of Administration, Mail Stop T-6 E7, along with an NRC Form 573, "Nuclear Regulatory Commission Issuances (NRCI) Transmission Record" (see the attached exhibit). NRC Form 573 can be obtained from the NRC supply room. Other documents referenced in the decision need not be sent to the NRCI Project Officer, but advise the NRCI Project Officer that these documents are publicly available in the NRC Public Document Room. (6)

When writing opinions, footnotes, or partial information (such as errata) on the diskette, be sure to identify the opinion, the director's decision number, and the month of issuance at the beginning of the diskette. Clearly identified information on the diskettes will help to avoid administrative delays and improve the technical production schedule for proofreading, editing, and composing the documents. (7)

Distribution (E) (continued)

Forward an electronic copy of the director's decision to the electronic BBS operator. (8)

Although 2.206 actions are controlled as green tickets, use the following guidelines when distributing copies internally and externally: (9)

- The original 2.206 petition and any enclosure(s) will accompany the Docket or Central File copy of the first response (acknowledgment letter). Copies are issued to the appropriate licensees and individuals on their docket service lists. (a)
- When action on a 2.206 petition is completed, the petition manager should ensure than all publicly releasable documentation is placed in the PDR, LPDR, and NUDOCs. (b)
- The distribution list should include appropriate individuals and offices as determined by the assigned office. (c)

Commission Actions (F)

SECY will inform the Commission of the availability of the director's decision. The Commission, at its discretion, may review the director's decision within 25 days of the date of the decision and may direct the staff to take some other action than that in the director's decision. If the Commission does not act on the director's decision within 25 days, the director's decision becomes the final agency action and a SECY letter is sent to the petitioner informing the petitioner that the Commission has taken no further action on the petition.

**Volume 8, Licensee Oversight Programs
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Exhibit

**NRC Form 573, "Nuclear Regulatory Commission
Issuances (NRCI) Transmission Record"**

NRC FORM 573 (5-94)		U.S. NUCLEAR REGULATORY COMMISSION NUCLEAR REGULATORY COMMISSION ISSUANCES (NRCI) TRANSMISSION RECORD				
SLIP OPINION, DIRECTOR'S DECISION, OR ERRATA SHEET	PAGES	OPINION/DECISION TRANSMITTED TO NRCI CONTRACTOR BY: (NAME/ORGANIZATION/TELEPHONE)	DATE OF TRANSMISSION	HEADNOTE TRANSMITTED TO NRCI CONTRACTOR BY: (NAME/ORGANIZATION)	DATE OF TRANSMISSION	DATE TRANSMISSION RECEIVED: (CONFIRMED BY NRCI CONTRACTOR)

NRC FORM 573 (5-94)

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