



OFFICE OF THE INSPECTOR GENERAL

U.S. NUCLEAR REGULATORY COMMISSION

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Audit of NRC's 10 CFR 2.206 Petition Review Process

OIG-17-A-23

August 22, 2017



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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

**OFFICE OF THE
INSPECTOR GENERAL**

August 22, 2017

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

FROM: Dr. Brett M. Baker */RA/*
Assistant Inspector General for Audits

SUBJECT: AUDIT OF NRC'S 10 CFR 2.206 PETITION REVIEW
PROCESS (OIG-17-A-23)

Attached is the Office of the Inspector General's (OIG) audit report titled *Audit of NRC's 10 CFR 2.206 Petition Review Process*.

The report presents the results of the subject audit. Following the August 10, 2017, exit conference, agency staff indicated that they had no formal comments for inclusion in this report.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG followup as stated in Management Directive 6.1.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at (301) 415-5915 or Paul Rades, Team Leader, at (301) 415-6228.

Attachment: As stated



Office of the Inspector General

U.S. Nuclear Regulatory Commission
Defense Nuclear Facilities Safety Board

OIG-17-A-23

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Results in Brief

Why We Did This Review

The U.S. Nuclear Regulatory Commission (NRC) serves to protect public health and safety in civilian use of nuclear power and materials in the United States. Since established in 1975, NRC has encouraged members of the public to use Title 10, Code of Federal Regulations, Section 2.206, *Requests for Action Under This Subpart* (10 CFR 2.206) as one method to bring issues to the agency's attention. Any person may file a request by using 10 CFR 2.206 to institute a proceeding pursuant to 10 CFR Section 2.202 *Orders*, (10 CFR 2.202) to modify, suspend, or revoke a license, or for any other action as may be proper.

NRC has not issued orders in response to any of the thirty-eight (38) 10 CFR 2.206 petitions filed from fiscal year (FY) 2013 through FY 2016. The lack of such actions could adversely affect the public's perspective on the effectiveness of the agency's 10 CFR 2.206 petition process.

The audit objective was to determine whether NRC staff followed agency guidance consistently in reviewing 10 CFR 2.206 petitions, and took steps to ensure appropriate information supports NRC decisions on 10 CFR 2.206 petitions.

Audit of NRC's 10 CFR 2.206 Petition Review Process

What We Found

NRC committed to periodically assess the 10 CFR 2.206 petition process to enhance its effectiveness, timeliness and credibility. However, NRC did not perform periodic assessments because it has not established management controls to ensure periodic assessments of the 10 CFR 2.206 petition process are performed. As a result, NRC missed opportunities to use data to enhance the 10 CFR 2.206 petition process.

In addition, NRC staff have difficulty applying 10 CFR 2.206 petition review and rejection criteria because the criteria are not clear. As a result, some petitions might not be dispositioned consistently or properly.

What We Recommend

This report makes recommendations to (1) develop controls to ensure formal assessments are performed and are documented for future use, and (2) clarify the criteria for reviewing and rejecting petitions.

Agency management stated their general agreement with the findings and recommendations in this report.

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ABBREVIATIONS AND ACRONYMS

ADAMS	Agencywide Documents Access and Management System
CFR	Code of Federal Regulations
DORL	Division of Operating Reactor Licensing
EDO	Executive Director for Operations
FY	Fiscal Year
MD	Management Directive
NRC	Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation
NUREG/BR	Brochures prepared by NRC staff
OIG	Office of the Inspector General
PRB	Petition Review Board

I. BACKGROUND

NRC serves to protect public health and safety in civilian use of nuclear power and materials in the United States. Since established in 1975, NRC has encouraged members of the public to use Title 10, Code of Federal Regulations, Section 2.206, *Requests for Action Under This Subpart* (10 CFR 2.206) as one method¹ to bring issues to the agency's attention. Any person may file a request by using 10 CFR 2.206 to institute a proceeding pursuant to 10 CFR Section 2.202 *Orders*, (10 CFR 2.202) to modify, suspend, or revoke a license, or for any other action as may be proper. In some circumstances, NRC issues orders or takes other enforcement action against an NRC licensee or other person subject to the Commission's jurisdiction for violating NRC regulations. However, NRC has not issued orders in response to any of the thirty-eight (38) 10 CFR 2.206 petitions filed from fiscal year (FY) 2013 through FY 2016. The lack of such actions could adversely affect public's perspective on the effectiveness of the agency's 10 CFR 2.206 petition process.

10 CFR 2.206 Oversight Roles and Responsibilities

NRC's Management Directive (MD) 8.11, *Review Process for 10 CFR 2.206 Petitions*, dated October 25, 2000², establishes procedures and timelines for the 10 CFR 2.206 review process, including roles and responsibilities. The Office of Nuclear Reactor Regulation (NRR), Division of Operating Reactor Licensing (DORL), Special Projects and Process Branch oversees the 10 CFR 2.206 petition review process. Oversight is managed by a branch chief and administered by a petition coordinator. The Executive Director for Operations (EDO) assigns office directors petitions to review. Office directors and a petition manager establish

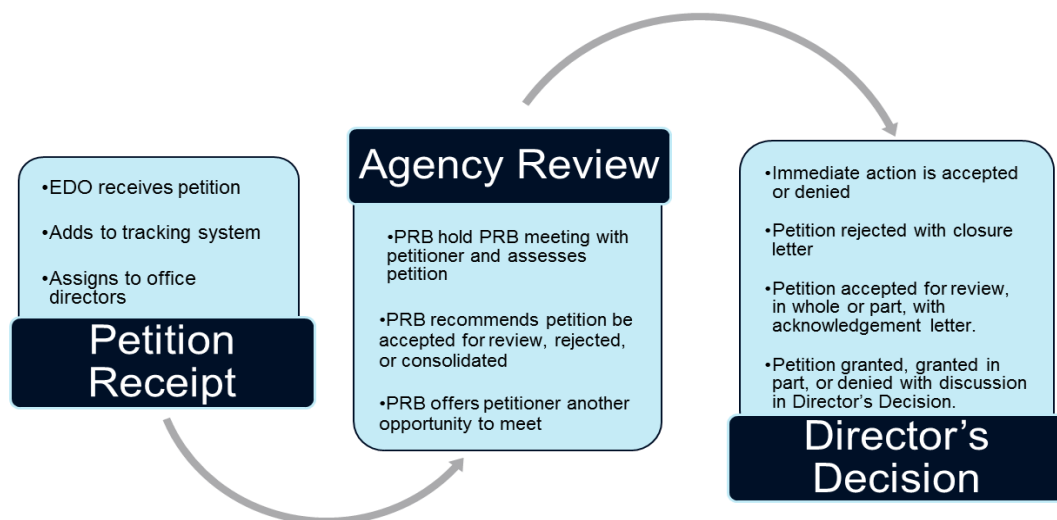
¹ Other methods include allegations process; comments on licensing actions and rulemaking; and requests for hearing.

² During this audit, OIG became aware of an effort underway to update MD 8.11. The October 25, 2000, version of this MD is publicly available at <https://www.nrc.gov/docs/ML0417/ML041770328.pdf>

Petition Review Boards (PRB) made up of cognizant management and staff and designate a chair for each Board. The PRB chair is responsible for ensuring appropriate review of all 10 CFR 2.206 petitions, and providing guidance for timely resolution of petitions. PRBs recommend to office directors whether petitions should be accepted for review, rejected, or consolidated.

Office directors are responsible for issuing a final Director's Decision and dispositioning the petition, which the Commission has an opportunity to review. NRC publishes *Federal Register* notices for petitions that meet the criteria for review and final Director's Decisions. NRC also publishes a status report of petitions under review and final Director's Decisions on completed petitions on NRC's public Web site. Figure 1 illustrates NRC's 10 CFR 2.206 petition process.

Figure 1: 10 CFR 2.206 Petition Process



Source: OIG generated based on agency information.

II. OBJECTIVE

The audit objective was to determine whether NRC staff followed agency guidance consistently in reviewing 10 CFR 2.206 petitions, and took steps to ensure appropriate information supports NRC decisions on 10 CFR 2.206 petitions.

III. FINDINGS

Staff follow guidance for reviewing 10 CFR 2.206 petitions and providing supporting documentation for decisions. However, opportunities exist for NRC to improve consistency and increase public confidence in the agency's 10 CFR 2.206 petition process by ensuring (1) periodic assessments of the 10 CFR 2.206 petition process are performed, and (2) petition review and rejection criteria are clear.

A. No Periodic Assessments of Process

NRC committed to periodically assess the 10 CFR 2.206 petition process to enhance its effectiveness, timeliness and credibility. However, NRC did not perform periodic assessments because it has not established management controls to ensure periodic assessments of the 10 CFR 2.206 petition process are performed. As a result, NRC missed opportunities to use data to enhance the 10 CFR 2.206 petition process.

What Is Required

NRC Committed to Perform Periodic Assessments of 10 CFR 2.206 Petition Process

In NUREG/BR-0200, Revision 5, *Public Petition Process*, dated February 2003. NRC committed to periodically assess the 10 CFR 2.206 petition process to enhance its effectiveness, timeliness and credibility. NRC committed to seeking internal and external feedback from stakeholders through public meetings, workshops, surveys, and *Federal Register* notices.

In addition, Federal internal control standards require that NRC programs be structured and implemented in a way to provide reasonable assurance that the agency is accomplishing its mission.

What We Found

No Periodic Assessments of 10 CFR 2.206 Petition Process

NRC staff and management responsible for implementing and overseeing the 10 CFR 2.206 petition process were not aware of any periodic assessments when interviewed by OIG auditors. Specifically, agency petition coordinators, petition managers, and senior management were not able to identify any formal periodic assessments performed for the 10 CFR 2.206 petition process. External stakeholders were also not aware of any assessments. Additionally, OIG auditors reviewed agency records and were not able to identify evidence that formal periodic assessments were performed. However, the agency solicited feedback from petitioners and staff as part of the efforts to update MD 8.11.

Why This Occurred

No Management Controls to Ensure Periodic Assessments

NRC did not perform periodic assessments of the 10 CFR 2.206 petition process because it has not established management controls to ensure periodic assessments are performed.

Why This Is Important

Risk of Incomplete Data and Missed Opportunities for Improvement

Because NRC has not performed periodic assessments of the 10 CFR 2.206 petition process, NRC missed opportunities to enhance effectiveness, timeliness, and credibility of the process.

Incomplete View of Resource Use

NRC does not have a complete view of total time spent reviewing 10 CFR 2.206 petitions. Some staff expressed concern that too much time is required to complete administrative work such as setting up the PRB and public meetings. Staff and managers noted as petitions range in complexity, the amount of time spent reviewing petition varies. Some NRC staff explained that they spent more than 150 hours reviewing a single petition. Periodic assessments could have helped NRC better identify how resources are used and make informed decisions about resource allocation.

Unrealistic Timeliness Goals

In addition, periodic assessments could have helped NRC establish more realistic timeliness metrics for 10 CFR 2.206 petition reviews. NRC staff and management noted a tendency to miss timeliness metrics for certain aspects of the review process. OIG reviewed a sample of petitions and identified the following examples that illustrate when a metric was missed:

- Petition managers should contact the petitioner within 1 week of receiving a petition; however, in one instance, a petitioner was contacted 26 days beyond the prescribed metric.
- A PRB meeting should be held within 2 weeks of receipt; however, a PRB meeting was held 7 days beyond the prescribed metric.
- Proposed Director's Decision should be issued within 120 days of the acknowledgement letter; however, two proposed Director's Decisions were issued 23 days and 56 days beyond the prescribed metric.
- Final Director's Decision should be issued within 45 days of the end of the petitioner comment period; however, one was issued 20 days beyond the prescribed metric.

Had NRC performed periodic assessments, it could have more proactively addressed missed timeliness metrics.

Risk of Unintended Outcomes

During the audit, NRC staff informed OIG that MD 8.11 was undergoing a revision. Process changes resulting from this guidance revision without the benefit of periodic assessments might not achieve intended outcomes.

Recommendation

OIG recommends that the Executive Director for Operations

1. Develop controls to ensure formal assessments are performed and are documented for future use.

B. Unclear Petition Review and Rejection Criteria

Agency positions should be readily understood and easily applied. NRC staff have difficulty applying 10 CFR 2.206 petition review and rejection criteria because the criteria are not clear. As a result, some petitions might not be dispositioned consistently or properly.

What Is Required

Petition Review and Rejection Guidance Should Be Clear

NRC established its *Principles of Good Regulation* to help focus on ensuring safety while balancing the interests of NRC's stakeholders including the public and licensees. NRC's *Principles of Good Regulation* require that agency positions be readily understood and easily applied.

What We Found

Difficulty Applying 10 CFR 2.206 Petition Review and Rejection Criteria

NRC staff have difficulty applying 10 CFR 2.206 petition review and rejection criteria. For example, some NRC staff said the petition review and rejection criteria are written subjectively and are open to interpretation. Other criteria are not defined, for example, some petition review criteria allow staff to reject a petition if a "proceeding" is underway, but there is no clear or consistent definition of a "proceeding."

Why This Occurred

10 CFR 2.206 Petition Review and Rejection Criteria Are Not Clear

Some staff noted that 10 CFR 2.206 petition review and rejection criteria are not clear. For example:

- MD 8.11 criteria require the agency to assess petitions against review, rejection, and consolidation criteria. Some staff stated this process is not clear because it requires that a petition be assessed against two or more sets of criteria.
- MD 8.11 allows staff to treat certain petitions as allegations, but staff identified a need for clearer review guidance to differentiate between an allegation and a 10 CFR 2.206 petition.

Why This Is Important

Some Petitions Might Not Be Consistently or Properly Dispositioned

Staff difficulty applying 10 CFR 2.206 petition review and rejection criteria could result in accepting petitions that should be rejected and rejecting petitions that should be accepted. Additionally, some petitioners complained that the petition review and rejection process is inconsistent and biased against petitioners. Inconsistent and improper application of criteria could adversely affect public's opinion of NRC's regulatory consistency.

Some petitioners said the 10 CFR 2.206 petition process is a conflict of interest. Specifically, petitioners assert that NRC cannot objectively review petitions that appeal or challenge NRC decisions because the staff performing the review are the same staff who made the original decision.

In addition, NRC staff and petitioners noted that the 10 CFR 2.206 petition process is not intended as an appeals process. Rather, the petitions are the primary mechanism for the public to request enforcement action by NRC in a public process.

Recommendation

OIG recommends that the Executive Director for Operations

2. Clarify the criteria for reviewing and rejecting petitions.

IV. CONSOLIDATED LIST OF RECOMMENDATIONS

OIG recommends that the Executive Director for Operations

1. Develop controls to ensure formal assessments are performed and are documented for future use.
2. Clarify the criteria for reviewing and rejecting petitions.

V. AGENCY COMMENTS

An exit conference was held with the agency on August 10, 2017. After reviewing a discussion draft, agency management provided comments that have been incorporated into this report, as appropriate. As a result, agency management stated their agreement with the findings and recommendations in this report and opted not to provide formal comments for inclusion in this report.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The audit objective was to determine whether NRC staff followed agency guidance consistently in reviewing 10 CFR 2.206 petitions, and took steps to ensure appropriate information supports NRC decisions on 10 CFR 2.206 petitions.

Scope

The audit focused on evaluating procedures used by NRC staff to review 10 CFR 2.206 petitions and steps taken to ensure appropriate information supports final Director's Decision on 10 CFR 2.206 petitions. We conducted this performance audit from February 2017 through June 2017, primarily at NRC headquarters in Rockville, Maryland. OIG gathered 38 petitions identified in the ADAMS and NRR/DORL databases from FYs 2013-2016. Internal controls related to the audit objective were reviewed and analyzed. NRC is generally compliant with relevant laws and regulations. Throughout the audit, auditors considered the possibility of fraud, waste, and abuse in the program.

Methodology

To accomplish the audit objectives, OIG reviewed relevant criteria for this audit, including 10 CFR 2.206 *Request for Action Under This Subpart*, NRC's Management Directive (MD) 8.11, *Review Process for 10 CFR 2.206 Petitions*, NRC's Allegation Manual, NRC's *Principles of Good Regulation*, NUREG/BR-0200, Revision 5, *Public Petition Process*. We also reviewed the Government Accountability Office *Standards for Internal Control in the Federal Government*.

OIG interviewed NRC management and staff at headquarters to obtain insights on the agency's process for reviewing 10 CFR 2.206 petitions, and to ascertain steps taken to ensure appropriate information supports NRC decisions on 10 CFR 2.206 petitions. OIG interviewed project

managers who had been assigned as petition managers to determine whether staff followed agency guidance consistently in reviewing 10 CFR 2.206 petitions. Finally, OIG interviewed petitioners to obtain their perspectives and opinions of NRC's 10 CFR 2.206 petition process.

OIG performed a judgmental sample and selected four cases for further review, one case for each fiscal year under review. The following characteristics were considered for the sample selection.

1. A petition containing a request for immediate action,
2. A petition that was partially accepted and partially rejected,
3. A petition in which the referenced plant was permanently shut down and undergoing decommissioning, and
4. A petition that addressed an issue for all operating reactors licensees.

Additionally, OIG discussed the 10 CFR 2.206 petition process with petitioners who made up approximately 53% (20 out of 38) of the 10 CFR 2.206 petitions submitted during fiscal years 2013 through 2016.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit was conducted by Paul Rades, Team Leader; Levar Cole, Audit Manager; John Thorp, Senior Technical Advisor; Jenny Cheung, Senior Auditor, Jimmy Wong, Senior Analyst; and Deyanara Gonzalez Lainez, Auditor.

TO REPORT FRAUD, WASTE, OR ABUSE

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COMMENTS AND SUGGESTIONS

If you wish to provide comments on this report, please email OIG using this [link](#).

In addition, if you have suggestions for future OIG audits, please provide them using this [link](#).