

Title 10 - Chapter 1
CODE OF FEDERAL REGULATIONS
UNITED STATES NUCLEAR REGULATORY COMMISSION
Part 2 - Rules of Practice for Domestic
Licensing Proceedings

AGENCY: Nuclear Regulatory Commission

ACTION: Final Rule

SUMMARY: The Commission is amending its Rules of Practice to provide more realistic time limits within which the Commission may determine whether to grant or deny petitions to review, and whether to review on its own initiative in such cases, a decision or action of the Atomic Safety and Licensing Appeal Board under 10 CFR 2.786.

EFFECTIVE DATE: July 8, 1980

FOR FURTHER INFORMATION CONTACT: Mark E. Chopko, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, 202-634-3224.

SUPPLEMENTARY INFORMATION: On May 2, 1977, the Commission issued a final rule which provided a procedure for parties to petition the Commission for a discretionary review of a decision or action of the Atomic Safety and Licensing Appeal Board. If twenty (20) days passed after the filing of a petition without Commission action granting it in whole or in part, the rule provided that the petition would be "deemed denied." However, since other parties to the proceeding were afforded a period of ten (10) days after service of a petition for review to file an answer opposing Commission review, the effective time for Commission consideration of the decision, petition and answers has always been

very short.

On April 26, 1978, the Commission issued miscellaneous amendments to its Rules of Practice which became effective on May 26, 1978. One of these amendments enlarged the time for parties "to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail" by providing that five days, rather than the previous three, be added to the prescribed period. 10 CFR 2.710.

Accordingly, a situation has been created where a party opposing a petition for review which was served by mail, as is usually the case, has fifteen days after filing of the petition to file an answer. The Commission's rules provide that filing of documents, such as answers to petitions for review, will be deemed to be complete as of the time of deposit in the mail, 10 CFR 2.701. The answers likely may not actually arrive at the Commission for several days thereafter.

As a result of these rules, the Commission's experience has been that in almost every case in which a petition for review is filed, an extension of the twenty-day period within which the Commission must decide whether to grant or deny it is necessary. Therefore, the Commission has decided to amend paragraph (b)(5) of section 2.786 to extend the period within which it may consider petitions to review to thirty (30) days, after which if it does not grant the petition in whole or in part, the petition shall be deemed denied.

On occasion confusion has been expressed about whether the time for exercising the Commission's discretion to review a decision or action on its own motion which is addressed in paragraph (a) of 10 CFR 2.786 is automatically extended

when a petition for review has been filed to coincide with the schedule established for consideration of petitions in paragraph (b). In almost every instance, the latter period may extend beyond the thirty (30) days now afforded by paragraph (a). The Commission recognizes that cases may occur in which it will determine that issues raised by a petition do not warrant review, but will elect to review on its own motion an issue not pressed by any party. In order to clarify that aspect of its regulations, the Commission has decided to amend paragraph (a) of 10 CFR 2.786 to provide that the time within which it may determine whether to review a case on its own motion is thirty days from the date of decision or action when no petitions for review are filed, or thirty (30) days after a petition has been filed, that is, co-extensive with the times described in 2.786(b)(5).

Because this amendment relates solely to matters of agency procedure, notice of proposed rulemaking and public procedure thereon are not required by section 553 of Title 5 of the United States Code and shall be omitted from this proceeding. As a rule applying only to internal agency procedure, this final rule shall be effective upon publication in the Federal Register.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 2, is published as a document subject to codification:

§ 2.786 Review of decisions and actions of an Atomic Safety and Licensing Appeal Board.

(a) Within thirty (30) days after the date of a decision or action by an Atomic Safety and Licensing Appeal Board under § 2.785, or within thirty (30) days after a petition for review of such decision or action has been filed under paragraph (b) of this section, the Commission may, in cases of exceptional legal or policy importance, review the decision or action on its own motion.

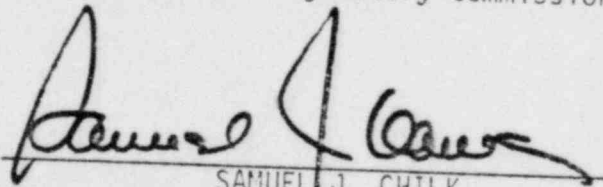
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(b) * * *

(5) If within thirty (30) days after the filing of a petition for review the Commission does not grant the petition, in whole or in part, the petition shall be deemed denied, unless the Commission in its discretion extends the time for its consideration of the petition and any answers thereto.

(Sec. 161p., Pub. L. No. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. No. 93-438, 88 Stat. 1243 (42 U.S.C. 5841)).

For the Nuclear Regulatory Commission



SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, DC,
this 30th day of June, 1980.