



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

March 24, 1995

The Honorable Lauch Faircloth, Chairman
Committee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington D.C. 20510

Dear Mr. Chairman:

The Nuclear Regulatory Commission is sending the enclosed proposed amendment to 10 CFR 2.802, Petitions for Rulemaking, to the Office of Federal Register for publication. The proposed amendment, if adopted, would encourage petitioners to submit sufficient supporting information in petitions to facilitate more expeditious processing by the NRC, and would also improve openness of the petition for rulemaking process by delineating priorities for review of the petitions. The proposed amendments are intended to expand the use of the petition process, and to make the process more responsive to petitioners and more efficient in the use of NRC and industry resources.

The Commission is issuing the proposed rule for public comment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over the typed name.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: As stated

cc: Senator Bob Graham

CC521



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

March 24, 1995

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington D.C. 20515

Dear Mr. Chairman:

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Dennis K. Rathbun, Director
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Enclosure:
As stated

cc: Representative Frank Pallone

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AF23

Petition for Rulemaking; Procedure
for Submission

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations pertaining to petitions for rulemaking. The proposed changes would provide incentive to submit sufficient supporting information in petitions to facilitate more expeditious disposition by the NRC, and would also improve openness of the petition for rulemaking process by delineating priorities for review of the petitions.

DATES: Comment period expires (75 days after the date of publication). Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

~~95033/0053~~ 16 pp.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 A.M. and 4:15 P.M. Federal workdays.

Copies of comments received may be examined at: the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: T.Y. Chang, telephone (301) 415-6450, or Chris Rourk, telephone (301) 415-5865, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

NRC and industry resources are limited and becoming more so. Inefficient regulations, i.e., regulations that are burdensome and have a minimal safety benefit, could divert NRC and industry resources from issues important to safety, thereby adversely affecting safety. While maintaining its emphasis on safety, the NRC over the past 10 years has initiated several programs designed to improve the efficiency of its regulatory program. These efforts include notably the Marginal To Safety (MTS) program, the Regulatory Review Group (RRG) and Cost Beneficial Licensing Actions (CBLA) Task Force studies, and the Technical Specification Amendments Screening Panel.

These programs have identified a number of inefficient regulatory requirements. They also enabled the NRC to conclude, among other matters,

that (1) an expanded role for the public, including the industry, to participate in the process of improving regulations through petitions for rulemaking is highly desirable and should be encouraged, and (2) the petition for rulemaking process could be improved to make it more responsive to petitioners.

Description

The NRC has prepared a proposed rule that would modify 10 CFR 2.802, Petition for Rulemaking, to expand the use and improve the responsiveness of the petition for rulemaking process. The proposed rule would also delineate factors that affect priorities for review of petitions. This would improve the openness of the rulemaking process.

The NRC staff currently expends resources in developing responses to petitions for rulemaking that may or may not result in changes to NRC regulations. The reasons for the granting or denial of petitions sometimes only become evident after completion of considerable NRC staff effort that may include the development of a regulatory analysis and a backfit analysis. As a consequence, processing and disposition of petitions sometimes is unduly prolonged. On the other hand, the NRC recognizes that licensees are in the best position to provide information to assist the NRC to assess the effect of regulatory actions and are also the primary beneficiaries of efforts to reduce regulatory requirements that are unduly burdensome but have no commensurable safety benefits.

In order to allow petitions to be treated more expeditiously, to facilitate the submission of petitions with strong technical merit, and to improve the likelihood of acceptance of petitions, the NRC proposes to modify § 2.802 to encourage industry and the public to submit more detailed supporting information in the petition for rulemaking than currently required. The NRC concluded that this modification would be an effective means to help processing the petitions in a more expeditious manner, because this information would enable the NRC staff to conclude, with a minimal expenditure of staff resources, whether to grant or deny the petition. The incentive for any petitioner to take this action would be that more expeditious review and processing of the petition will result. It is expected that this alternative process will be more efficient in the use of NRC staff and industry resources and be more responsive to petitioners. This proposed rule would not change any existing provision regarding petitions for rulemaking, rather it offers an alternative within the petition process which would be available to all petitioners regardless of the nature of the petitions.

The industry is therefore encouraged to identify and propose improvements to regulations that seek to reduce the regulatory burden while providing sufficient supporting information in the petition to demonstrate that the proposed changes will result in significant reduced burden and minimal impact to overall safety (safety neutrality). Similarly, members of the public who seek safety enhancement through the rulemaking process are encouraged to make use of the sizable publicly available safety information to support and expedite their petitions.

It is to be noted that the prioritization and scheduling for review and disposition by NRC are based on consideration of the merit of each petition. The merit of a petition is judged on its safety significance and the level of detail of supporting information. Petitions containing supporting information additional to those currently required would improve their priority for review and receive more expeditious disposition. Consideration of safety significance is the first criterion for prioritizing the review and disposition of petitions. It is the primary concern of the NRC to ensure that design and operation of NRC licensed facilities are carried out in a manner which assures adequate protection of public health and safety, of the environment, and of national security. Therefore, petitions found by the NRC to raise a concern in this regard would receive immediate NRC attention. In assessing the safety significance of petitions consideration would be given to the technical information submitted and other information available to the NRC, and to whether the proposal is likely to meet the criteria of the backfit rule. Petitions that are safety neutral, i.e., implementation of which would result in an insignificant change to the level of protection to public health and safety, would be resolved in such a way as to minimize the cost to the NRC and maximize the benefit to the petitioner.

The more detailed supporting information in addition to that required in the current § 2.802(c) should include the suggested regulatory text, regulatory analysis, backfit analysis (if required), information required by the National Environmental Policy Act (NEPA), and a guidance document similar in nature to a Regulatory Guide, if needed, in support of a proposed rule, as described in paragraph (d)(2) of the proposed rule. The regulatory analysis

is important for petitions seeking either to enhance safety or to reduce regulatory burden, because it would provide information on the changes to risk levels as well as costs associated with proposed alternatives.

The proposed changes would afford any petitioner two options: submit the minimal threshold information in the petition that is required by the current rule and be subject to the regular processing procedures, or submit more detailed supporting information and analyses in the petition in return for a more expeditious processing procedure by the NRC. The proposed revisions would not change any existing provision regarding petitions for rulemaking if they meet the minimum threshold requirement of the current § 2.802(c).

Subsequent to the establishment of review priority the NRC would develop a schedule for all petitions that are docketed. This schedule would reflect the priority of each petition based on consideration of the combination of safety significance and level of detail of supporting information. A summary of petitions for rulemaking, including the status of each petition, would be prepared semiannually by the NRC staff, as described in paragraph (h) of the proposed rule. A copy of this report would be available for public review in the NRC Public Document Room.

Further, the NRC has decided to provide administrative procedures to make it easier for concerned parties to submit petitions for changes to regulatory guidance documents, such as regulatory guides, bulletins, generic letters and sections of the Standard Review Plan (SRP). These documents do not have the force and effect of a regulation, but they are used by the NRC

staff to identify methods that would comply with the regulation. A formal procedure which enables interested parties to propose changes to such regulatory guidance documents does not now exist. The guidance for preparation of more detailed petitions for rulemaking as well as petitions requesting the revision of regulatory guidance documents will be provided in proposed Regulatory Guides 10.XX and 10.XY to be developed in the near future.

Specific Considerations

Advice and recommendations on the proposed revision to 10 CFR 2.802 and on any other points considered pertinent are invited from all interested persons. Comments and supporting reasons are particularly requested on the following questions:

1. Is the concept of the proposal sound, namely that all petitioners have the option to submit more detailed supporting information which, if found adequate, would lead to faster NRC disposition?
2. Is the description of information required for detailed supporting information in paragraph (d)(2) sufficiently complete to avoid unnecessary correspondence after the petition has been docketed?
3. Under what circumstances should a guidance document in the form of a Regulatory Guide be required to support a petition? What criteria are appropriate for not requiring it?
4. Should there be an NRC electronic bulletin board dealing exclusively with petitions?
5. As the NRC attempts to shift rulemaking approaches to be more performance-based and risk-based, what changes would be appropriate for the information requirements under the proposed revision of 10 CFR 2.802?

6. Should administrative procedures be established to allow petitions for changes to regulatory guidance documents, such as regulatory guides, bulletins, generic letters, and sections of the Standard Review Plan? Should these procedures be incorporated in a rule?

Environmental Impact: Categorical Exclusion

The proposed regulations involve an amendment to 10 CFR 2.802, and qualify as actions eligible for the categorical exclusion from environmental review in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for these proposed regulations.

Paperwork Reduction Act Statement

The proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average an additional 500 hours for each PRM that contains additional supporting information and analyses. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0136), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Administrative Procedure Act requires each Federal agency to give interested persons the right to petition for the issuance, amendment, or repeal of a rule. The proposed changes would facilitate more expeditious disposition by the NRC of petitions with sufficient supporting information, and would also improve the openness of the rulemaking process by delineating petition review priorities. This expended right, however, is available to any interested petitioner. The proposed rule does not affect any existing rights and gives expanded rights to licensees and interested persons. This proposed rule constitutes the preferred course of action and the cost involved in its promulgation and action is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for the proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Any interested person has the right to submit a petition for rulemaking under the existing guidelines. If an interested person voluntarily chooses to develop additional information and perform additional analysis to support a proposed petition, the proposed rule would further encourage petitioners to do so. If the interested person is unable or unwilling to incur the costs associated with developing additional information and performing these analyses, a petition may be submitted under the existing rule. The NRC staff will continue to perform the analyses that may be required to resolve the petition. The proposed rule does not impose any obligations on regulated

entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in section 3 of the Small Business Act (15 U.S.C. 632), or within the small business standards contained in 13 CFR Part 121.

Backfit Analysis

This proposed rule does not involve any new provisions which would impose backfits as defined in 10 CFR 50.109(z)(1). Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental Protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:
Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C.

2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721, also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section 2.8 paragraph (b) is revised to read as follows:

(b) The approved information collection requirements contained in this part appear in § 2.802 and appendix C.

[56 FR 29408, June 27, 1991, as amended at 58 FR 14309, Mar. 17, 1993]

3. Section 2.802 is revised to read as follows:

§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend, or rescind any regulation. The petition should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Chief, Docketing and Service Branch.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing the Director, Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Chief, Rules Review and Directives Branch. A prospective petitioner may also telephone the Rules Review and Directives Branch on (301) 415-7158 or toll free on (800) 368-5642.

(1) In any consultation before the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to:

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

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

(iii) 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.

(2) In providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

(c) Each petition filed under this section shall:

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

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

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

(d) Petitions for rulemaking will be prioritized and scheduled for review and disposition by NRC on the basis of the following considerations:

(1) Safety significance of the issues identified or alternatives proposed in petitions will be the dominant consideration for the prioritization of petitions.

(2) Petitions containing supporting information additional to that described in paragraph (c) of this section, will improve the priority for review and more expeditious disposition. Sufficient supporting information for higher priority should include:

(i) The text of a proposed, revised, or amended regulation ("the proposed rule");

(ii) Supplementary information constituting the proposed statement of considerations for the regulation;

(iii) Supporting material to show conformance with legal requirements such as the National Environmental Policy Act, the Paperwork Reduction Act, and the Regulatory Flexibility Act, as appropriate;

(iv) A regulatory analysis. For information on the form and content of a regulatory analysis see NUREG/BR-0058¹ and NUREG/CR-3568²;

(v) Supporting information that responds to 10 CFR 50.109(c), the Backfit rule where applicable; and

1. NUREG/BR-0058, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," Rev. 1, May 1984. A draft Rev. 2 of this report was issued for comment in August 1993, and should be published as final report in the near future.

2. NUREG/CR-3568, "A Handbook for Value-Impact Assessment," December 1983. The document is currently undergoing revision and will tentatively be titled the "Regulatory Analysis Technical Evaluation Handbook."

NOTE: Copies of NUREG/BR-0058 and NUREG/CR-3568 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402-9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

(vi) A guidance document in the form of a Regulatory Guide when necessary (Note that a Regulatory Guide is usually provided for a performance based regulation).

(e) The petitioner may request the Commission to suspend all or part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.

(f) If it is determined that the petition includes the information required by paragraphs (c) and, if petitioner elects, (d)(2) of this section and is complete, the Director, Division of Freedom of Information and Publications Services, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will deposit a copy of the docketed petition in the Commission's Public Document Room. Public comment may be requested by publication of a notice of the docketing of the petition in the Federal Register, or, in appropriate cases, may be invited for the first time upon publication in the Federal Register of a proposed rule developed in response to the petition. Publication will be limited by the requirements of section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

(g) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraphs (c) and, if applicable, (d)(2) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency

within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

(h) The Director, Division of Freedom of Information and Publications Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying for a fee in the Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, MD, this 22nd day of March 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates

Andrew L. Bates, Acting

Secretary of the Commission.

CONGRESSIONAL CORRESPONDENCE SYSTEM
DOCUMENT PREPARATION CHECKLIST

This checklist is to be submitted with each document (or group of Qs/As) sent for filing into the CCS.

1. BRIEF DESCRIPTION OF DOCUMENT(S) Mr. To Sen. Fawcett
2. TYPE OF DOCUMENT ☒ Correspondence ☐ Hearings (Qs/As)
3. DOCUMENT CONTROL ☐ Sensitive (NRC Only) ☒ Non-sensitive
4. CONGRESSIONAL COMMITTEE and SUBCOMMITTEES (if applicable)

Congressional Committee
Subcommittee
5. SUBJECT CODES
(a) _____
(b) _____
(c) _____
6. SOURCE OF DOCUMENTS
(a) _____ 5520 (document name) _____
(b) ☒ Scan (c) _____ Attachments
(d) ☒ Rekey (e) _____ Other _____
7. SYSTEM LOG DATES
(a) 3/31/95 Date OCA sent document to CCS
(b) _____ Date CCS receives document
(c) _____ Date returned to OCA for additional information
(d) _____ Date resubmitted by OCA to CCS
(e) _____ Date entered into CCS by _____
(f) _____ Date OCA notified that document is in CCS
8. COMMENTS

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