Review Process for 10 CFR 2.206 Petitions

Directive 8.11

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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. The Commission may deny or grant a request for enforcement action, in whole or in part, and may take action that satisfies the safety concerns raised by the requester, even though it is not necessarily an enforcement action. Requests that raise health and safety and other issues without requesting enforcement action will be reviewed by means other than the 10 CFR 2.206 process.

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 appropriate participation by the petitioners and the public in NRC's decision-making activities related to the 10 CFR 2.206 petition process. (023)
- To ensure effective communication with the petitioner on the status of the petition, including providing 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 and assigns action for all petitions filed under 10 CFR 2.206.

Director, Office of the Chief Information Officer (OCIO)
(032)

Provides hardware, software, and communication services support of the NRC Home Page for making information publicly available on the status of the petitions.

Office of the General Counsel (OGC)
(033)

- Provides legal review and advice on 10 CFR 2.206 petitions and director's decisions upon specific request from the staff in special cases or where the petition raises legal issues. (a)
- Gives legal advice to the EDO, office directors, and staff on relevant 2.206 matters. (b)

Office Directors (or Designees)
(034)

- Have overall responsibility for assigned petitions. (a)
- Approve or deny a petitioner's request for immediate action. (b)
- Sign all acknowledgment letters and director's decisions. (c)
- Determine whether criteria for a meeting with the petitioner and licensee are met, and notify the Commission, through the EDO, once a determination is made that a 2.206 petition meets the criteria for a meeting. (d)

Office Directors (or Designees)
(034) (continued)

- Provide up-to-date information for the monthly status report on all assigned petitions, including the total number of staff hours expended on each open petition; provide this information to the agency coordinator who, in turn, ensures that the information is made publicly available in the Public Document Room and on the NRC Home Page. (e)
- Appoint a petition review board chairperson. (f)
- Designate a petition manager for each petition. (g)
- Concur, as appropriate, in each extension request from the petition manager and forward the extension request to the Office of the EDO (OEDO) for approval. (h)
- Promptly notify the Office of Investigations (OI) of any allegations of suspected wrongdoing by a licensee, or the Office of the Inspector General (OIG) of suspected wrongdoing by an NRC staff person or NRC contractor, that are contained in the petitions they may receive. (i)
- Obtain review and concurrence from the Office of Enforcement for proposed director's decisions that involve potential enforcement implications. (j)
- Ensure that the director's decision and the supporting evaluation of the petition adequately reflects information presented at any meetings with the petitioner, to the extent that such information was useful. (k)

Regional Administrators
(035)

- Refer any 2.206 petitions they may receive to the EDO. (a)
- Promptly notify OI of any allegations of suspected wrongdoing by a licensee, or OIG of suspected wrongdoing by an NRC staff person or NRC contractor, that are contained in the petitions they may receive. (b)
- As needed, provide support and information for the preparation of an acknowledgment letter and/or a director's decision on a 2.206 petition. (c)
- Make the petition manager aware of information that is received or that is the subject of any correspondence relating to a pending petition. (d)

2.206 Petition Review Board Chairperson
(Each program office has a board chairperson, generally an SES manager.)
(036)

- Chairs petition review board meetings. (a)
- Ensures appropriate review of all new petitions in a timely manner. (b)
- Ensures appropriate documentation of petition review board meetings. (c)
- Chairs periodic meetings with the petition managers to discuss the status of open petitions and to provide guidance for timely issue resolution. (d)

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation (NRR)
(037)

Appoints the Agency 2.206 Coordinator, NRR, who prepares monthly reports to the EDO on petition status, age, and resource expenditures for the signature of the Associate Director for Project Licensing and Technical Analysis.

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 details the procedures for staff review and disposition of petitions submitted under Section 2.206.

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 II of Handbook 8.11).

Definitions
(8.11–06) (continued)

A 10 CFR 2.206 Petition Meeting. A meeting open to the public and held by NRC staff to provide an opportunity to the petitioner and licensee to supply information to assist NRC staff in the evaluation of petitions that raise new, significant safety issues, as defined in Part II(D)(3)(a) of Handbook 8.11, or that provide new information or approaches for the evaluation of significant safety issues previously evaluated.

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."

Nuclear Regulatory Commission—

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

Investigative Procedures Manual, Office of Investigations, revised August 1996.

Management Directive (MD) 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff."

— MD 8.8, "Management of Allegations."

— MD 12.6, "NRC Sensitive Unclassified Information Security Program."

Memorandum of Understanding Between the NRC and the Department of Justice, December 12, 1988.

"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

Initial Staff Actions

Introduction (A)

Title 10 of the *Code of Federal Regulations*, Section 2.206 (1)

This section of the regulations 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)

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)

Section 2.206 provides a procedure that allows any person to file a request to institute a proceeding for enforcement action and requires that the petition be submitted in writing and provide sufficient grounds for taking the proposed action. Do not treat general opposition to nuclear power or a general assertion of a safety problem, without supporting facts, as a formal petition under 10 CFR 2.206. Treat general requests as routine correspondence. (c)

NRC's Receipt of a Petition (2)

After NRC receives a petition, it is assigned to the director of the appropriate office for evaluation and response. 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.

Introduction (A) (continued)

NRC Home Page (3)

The NRC Home Page provides the up-to-date status of pending 2.206 petitions, director's decisions issued, and notices of meetings. The NRC external home page is accessible via the World Wide Web, and documents may be found at *http://www.nrc.gov/NRC/PUBLIC/2206/index.html*. Director's decisions are published in NRC Issuances (NUREG-0750).

Assignment of Staff Action and 2.206 Petition Review Board (B)

Office of the Executive Director for Operations (OEDO) (1)

The OEDO assigns the petition to the appropriate office for action. The original incoming is sent to the office and a copy of the petition is sent to the Office of the General Counsel (OGC).

Agency 2.206 Coordinator, Office of Nuclear Reactor Regulation (NRR) (2)

The Agency 2.206 Coordinator, NRR (appointed by the Director, Division of Licensing Project Management), receives copies of all 2.206 petitions from OEDO and prepares the 2.206 periodic status report.

Assigned Office (3)

The office director of the assigned office designates a petition manager and an office petition review board chairperson for each petition. The petition manager drafts the acknowledgment letter and *Federal Register* notice (see Exhibits 1 and 2 of this handbook). The petition manager ensures that the petition is placed in the public document room after it is determined that the petition does not contain allegations or sensitive information. A petition review board meets within 3 weeks of receipt of the petition. Each assigned office conducts at least one review board meeting for each petition. The petition review board consists of—(a)

- A petition review board chairperson (SES manager or above) (i)
- A petition manager (ii)
- Cognizant technical review branch chief(s), as necessary (iii)
- An Office of Enforcement (OE) or Office of Investigations (OI) representative, as needed (iv)

In addition, OGC normally will participate. (b)

Assignment of Staff Action and 2.206 Petition Review Board (B) (continued)

Assigned Office (3) (continued)

The purpose of the petition review board meeting is to—(c)

- Determine whether the petitioner's request meets the criteria defined in 10 CFR 2.206 (see Part II(A) of this handbook) (i)
- Determine whether the petition meets the criteria for a meeting with the petitioner and licensee (see Part II(C) of this handbook) (ii)
- Promptly address any request for immediate action (iii)
- Address the possibility of issuing a partial director's decision (iv)
- Draft a schedule for responding to the petitioner so that a commitment is made by management and the technical review staff to respond to the petition in a timely manner (see Part IV(A) of this handbook) (v)
- Determine whether the petition is sufficiently complex that additional review board meetings should be scheduled to ensure that suitable progress is being made (vi)

The appointed petition review board chairperson for each office—(d)

- Chairs and coordinates 2.206 petition review board meetings for the assigned office (i)
- Ensures the 2.206 petition review board meetings are documented (ii)

Assigned Office Action (C)

Office Director (1)

The assigned office director signs and issues the acknowledgment letter and the *Federal Register* notice. This action should be completed by the date specified by OEDO for the action. (a)

The office director, or designee, ensures 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 30 days. (b)

Assigned Office Action (C) (continued)

Office Director (1) (continued)

When an unannounced technical inspection or an OI investigation is involved, the office director makes the decision to release information to the licensee in a manner to ensure that the staff does not release information that would indicate to the licensee or the public that an unannounced inspection or investigation will be undertaken or information that would undermine the inspection or investigation. (c)

The office director carefully considers any potential conflict or loss of objectivity that might result from assigning the same staff who were previously involved with the issue that gave rise to the petition. (d)

Petition Manager (2)

The petition manager—(a)

- Briefs the petition review board on the petitioner's request(s), any background information, the need for an independent technical review, and a proposed plan for resolution, including target completion dates (i)
- Promptly advises the licensee of the petition, sends the licensee a copy of the petition, and places the petition and all subsequent related correspondence in the Public Document Room. (ii)
- Drafts the acknowledgment letter and *Federal Register* notice, serves as the NRC point of contact with the petitioner, provides updates to the periodic 2.206 status report to the Executive Director for Operations (EDO), and monitors the progress of any OI investigation and related enforcement actions (iii)
- Prepares the director's decision on the petition for the office director's consideration, including coordination with the appropriate staff supporting the review (iv)
- Ensures appropriate documentation of all 10 CFR 2.206 petition determinations, including the determination on whether a meeting is offered (v)

The petition manager ensures that a copy of this management directive is included with the acknowledgment letter. The acknowledgment letter also should include the name and telephone number of the petition manager and identify the technical staff organizational units that will participate in the review. (b)

Assigned Office Action (C) (continued)

Petition Manager (2) (continued)

The acknowledgment letter, as well as the transmittal letter for the director's decision or partial director's decision, should acknowledge the petitioner's efforts in bringing issues to the staff's attention. (c)

If appropriate, the decision transmittal letter should acknowledge that the petitioner identified valid issues and should specify the corrective actions that have been or will be taken to address these issues, notwithstanding that some or all of the petitioner's specific requests for action have not been granted. (d)

The petition manager places the petitioner on distribution for all relevant NRC correspondence to the licensee to ensure that the petitioner receives copies of all NRC correspondence with the licensee pertaining to the petition. If there is a service list(s) add the petitioner to the list(s) for all headquarters and regional documents on the affected dockets. Remove the petitioner's name from distribution and/or the service list(s) 90 days after issuance of the director's decision. The petition manager sends licensee-prepared documents submitted to the NRC that are relevant to the petition to the petitioner for the same duration as staff-generated documents. If the licensee is asked to respond, the petition manager advises the licensee that the NRC intends to place the licensee's response in the Public Document Room and provide the response to the petitioner. (e)

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 petition manager ensures the information is protected in accordance with 10 CFR 2.790. (f)

The petition manager also ensures that the petitioner is 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 does not include NRC correspondence or documentation related to an OI investigation, which will not be released outside NRC without the approval of the Director, OI. (g)

Assigned Office Action (C) (continued)

Petition Manager (2) (continued)

Before the petition review board meeting, the petition manager informs the petitioner 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 requests anonymity and that the petition not be made public, advise the petitioner that, because of its public nature, the 2.206 process cannot provide protection of the petitioner's identity. In such cases, advise the petitioner that the matter will be handled as an allegation and that the petitioner should withdraw the petition in writing. During this telephone contact, offer the petitioner an opportunity to have one representative give a presentation to the petition review board. The petitioner (or representative) may participate in person or by teleconference on a recorded line and only for the purpose of explaining the requested actions, their bases, and answering staff questions. The presentation will be limited to about a half hour and will be transcribed. Treat the transcription as a supplement to the petition and send a copy of the transcription to the petitioner and to the same distribution as the original petition. (h)

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. If the staff plans to take an action that is contrary to an immediate action requested in the petition before issuing the acknowledgment letter (such as permitting restart of a facility when the petitioner has requested that restart not be permitted), the petition manager must promptly notify the petitioner by telephone of the pending staff action. The petitioner will not be advised of any wrongdoing investigation being conducted by OI. (i)

In cases where the staff identifies certain issues in a petition that it believes are more appropriately addressed using the allegation process, the petition manager advises the petitioner of this staff view during the initial telephone contact and suggests to the petitioner that he or she withdraw those issues from the petition with the understanding that they will be addressed through the allegation process. (j)

Assigned Office Action (C) (continued)

Petition Manager (2) (continued)

All telephone contacts with the petitioner will be documented by a memorandum to file, which becomes part of the petition file. (k)

OGC Staff Attorney (3)

OGC normally participates in the petition review board meetings for the 2.206 petition and provides legal review and advice on 10 CFR 2.206 petitions and director's decisions upon specific request from the staff in special cases or where the petition raises legal issues. OGC may be assigned as the responsible office for the review, if appropriate.

Reporting Requirements and Updating the Status of Petitions on the NRC Home Page (D)

On a monthly basis, the Agency 2.206 Coordinator, NRR, will contact all petition managers reminding them to prepare a status report on 2.206 petitions in their office. This report will be made available in the PDR and placed on the NRC Home Page. The petition managers should electronically mail the status report for each open petition, with the exception of sensitive information as described below, to PETITION. The Agency 2.206 Coordinator combines all the status reports, including staff performance metrics for petitions processed under 10 CFR 2.206 for the current year, in a monthly report to the EDO from the Associate Director, Project Licensing and Technical Analysis, and provides a copy of the report to the Web operator for placement on the NRC Home Page. (1)

If the information on the status of the petition is sensitive information that may need to be protected from disclosure (e.g., 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 and Agency 2.206 Coordinator should ensure that this information is protected from disclosure. Sensitive information should be handled in accordance with Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program." (2)

Part II

Criteria for Petition Evaluation

Use the criteria discussed in this part for determining whether a petition should be considered under 10 CFR 2.206, if similar petitions should be consolidated, and if a public meeting should be offered.

Criteria for Reviewing Petitions Under 10 CFR 2.206 (A)

Review a petition under the requirements of 10 CFR 2.206 if the request meets all of the following criteria: (1)

- The petition contains a request for enforcement action: either requesting 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 enforcement action requested and the facts that constitute the bases for taking the particular action are specified. The petitioner must provide some element of support beyond the bare allegation. The supporting facts must be credible and sufficient to warrant further inquiry. (b)

- Acceptance for review under 10 CFR 2.206 will not result in circumventing an available proceeding in which the petitioner is or could be a party. (c)

If a petition meets the criteria but does not specifically cite 10 CFR 2.206, the petition manager will attempt to contact the petitioner by telephone to determine if the individual wants the request processed pursuant to 10 CFR 2.206. If the petition is unclear or appears to be marginal in meeting the criteria for review, the petition manager will encourage and facilitate a presentation to the petition review board by the petitioner so that the concerns can be clarified. (2)

Criteria for Rejecting Petitions Under 10 CFR 2.206 (B)

Do not review a petition under 10 CFR 2.206, whether specifically cited or not, under the following circumstances: (1)

- The incoming correspondence does not ask for an enforcement action or fails to provide sufficient facts to support the petition but simply alleges wrongdoing, violations of NRC regulations, or existence of safety concerns. The request cannot be 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). These assertions will be treated as allegations and referred for appropriate action in accordance with Management Directive (MD) 8.8, "Management of Allegations." (a)
- The petitioner raises issues that already have been the subject of NRC staff review and evaluation either on the cited facility, other plant facilities, or on a generic basis, for which a resolution has been achieved, the issues have been dispositioned, and the resolution is applicable to the facility in question. (b)
- The request is to reconsider or reopen a previous enforcement action (including a decision not to initiate an enforcement action) or a director's decision and will not be treated as a 2.206 petition unless it presents significant new information. (c)
- The request is to deny a license application or amendment. This type of request should initially be addressed in the context of the relevant licensing action, not under 10 CFR 2.206. (d)

If a petitioner's request does not meet the criteria for consideration under 10 CFR 2.206, a letter will be sent to the petitioner explaining why the request is not being reviewed under 10 CFR 2.206 (see Exhibit 3). (2)

Criteria for Consolidating Petitions (C)

All requests submitted by different individuals will, as a general practice, 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 petition review board considers the benefits of consolidating the petitions against the potential of diluting the importance of any petition and recommends whether or not consolidation is appropriate. The assigned office director determines whether or not to consolidate the petitions.

Criteria for Meetings (D)

For petitions meeting the criteria specified in this section, the staff offers the petitioner an opportunity for a meeting. A meeting, which is a resource for the staff in evaluating the petition, also affords the petitioner and the licensee an opportunity for enhanced involvement in the Commission's decision-making process. (1)

A meeting is not automatically granted and will not be offered simply at the petitioner's request. If the staff offers the petitioner the opportunity for a meeting, the petitioner then has the option to accept or reject the offer. If the petitioner rejects the offer, a meeting will not be conducted and the petition review will continue. If the petitioner accepts the offer of a meeting, the licensee will be invited to participate in the meeting. (2)

The staff uses the following criteria to determine if an opportunity for a meeting is to be offered to the petitioner. Either one of the two elements listed below must be met. (3)

- The petition raises the potential for a significant safety issue. For nuclear reactors and nuclear material licensees, a significant safety issue is an issue that could lead to a significant exposure, could cause significant core damage, 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: (a)
  - The petition presents a significant safety issue not previously evaluated by the staff. (i)
  - The petition presents significant 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 the issue. (iii)
- The petition alleges violations of NRC requirements involving a significant safety issue for which new information or a new approach has been provided, and it presents reasonable supporting facts that tend to establish that the violation occurred. (b)

Criteria for Meetings (D) (continued)

A meeting 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 ensures that a meeting will not compromise the protection of this information before offering the petitioner the opportunity for a meeting. A meeting also will not be held simply because the petitioner claims to have additional information and will not present it in any other forum. (4)

Part III

Procedures for Conducting a 10 CFR 2.206 Petition Meeting

After the staff determines that a petition meets the criteria for a meeting, set forth in Part II (D) of this handbook, and the petitioner accepts the offer of a meeting, the petition manager contacts the petitioner to schedule a mutually agreeable date for the meeting. The petition manager also requests the licensee to participate in the meeting to present its position and coordinates the schedules and dates with the licensee. The meeting must be scheduled so as not to adversely impact the established petition review schedule.

Meeting Location (A)

Meetings normally will be held at NRC headquarters in Rockville, Maryland, with provisions for participation by telephone or video link. If justified by special circumstances, the staff may hold the meeting at some location other than NRC headquarters.

Notice of Meeting (B)

Provisions for a meeting notice will be made in accordance with agency policy. The NRC petition manager will ensure that a copy of the meeting notice is placed on the NRC Home Page, that the scheduled meeting is included in the Public Meeting Notice System, that the Office of Public Affairs is notified of the meeting, and that the meeting notice is communicated to the petitioner. (1)

All meetings are transcribed, and the transcripts are publicly available. (2)

Meeting Chairperson (C)

The meeting is chaired by the NRC office director responsible for addressing the petition, or by his or her designee. (1)

The purpose of the meeting is to obtain additional information from the petitioner and the licensee 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 has final authority to determine the conduct of the meeting. Members of the public may attend as observers. (2)

Meeting Format (D)

The meeting chairperson provides a brief summary of the 2.206 process, the purpose of the meeting, and the petition. Following the opening statement—(1)

- The petitioner is allowed a reasonable amount of time (approximately 30 minutes) to articulate the basis for the petition. (a)
- NRC staff have an opportunity to ask the petitioner questions for purposes of clarification. (b)
- The licensee is then allowed a reasonable amount of time (approximately 30 minutes) to address the issues raised in the petition. (c)
- NRC staff have an opportunity to ask the licensee questions for purposes of clarification. (d)

Part IV
Further Staff Actions

General (A)

Schedule (1)

The assigned office holds a petition review board meeting on the submitted 2.206 petition within 3 weeks of receipt of the petition. The review board helps determine the appropriate schedule as well as how best to respond to the petitioner's concerns. (a)

The 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. The Office of the Executive Director for Operations (OEDO) tracks the target date, and any change of the date requires approval by the OEDO. Enforcement actions that are prerequisites to a director's decision must be expedited and completed in time to meet the the 120-day goal. Investigations by the Office of Investigations (OI) should be expedited to the extent practicable. However, the goal of issuing a full, or partial, director's decision within 120 days after issuing the acknowledgment letter applies only to petitions whose review schedules are within the staff's control. If issues in a petition are the subject of an extended OI investigation, or a referral to the Department of Justice (DOJ), or if NRC decides to await a Department of Labor (DOL) decision, a partial director's decision is issued within 120 days, and the 120-day goal is not applied to the remainder of the petition. When more time is needed (e.g., when issues in a petition are the subject of an extended OI investigation, or a referral to DOJ, or if NRC decides to await a DOL decision), the assigned office director determines the need for an extension of the schedule and requests the extension from the OEDO. (b)

General (A) (continued)

Schedule (1) (continued)

If the director's decision cannot be issued in 120 days, the petition manager promptly contacts the petitioner explaining the reason(s) for the delay and maintains a record of such contact. If the delay results from an ongoing OI investigation, the petition manager contacts the Director, OI, to obtain approval for citing the OI investigation as the reason for the delay. (c)

If there is alleged wrongdoing on the part of licensees, their contractors, or their vendors, immediately notify OI. If there is alleged wrongdoing involving an NRC employee, NRC contractors, or NRC vendors, immediately notify the Office of the Inspector General (OIG). (d)

Petition Review Board Actions (2)

The petition review board ensures that an appropriate petition review process is followed. This includes recommending whether or not: (a)

- The submittal qualifies as a 2.206 petition. (i)
- The petitioner should be offered or informed of an alternative process (e.g., consideration of issues as allegations, consideration of issues in a pending license proceeding, or conduct of an inspection). (ii)
- The petition should be consolidated with another petition. (iii)
- A public meeting should be offered. (iv)
- Referral to OI or OIG is appropriate. (v)
- There is a need for additional review board meetings. (vi)
- There is a need for the Office of the General Counsel (OGC) to participate in the review. (vii)
- An adequate review schedule and technical review participation have been established. (viii)
- Any petitioner's request for immediate action should be granted or denied. (ix)
- The licensee should be requested to respond to the petition. (x)
- A partial director's decision should be issued. (xi)

General (A) (continued)

Petition Manager Actions (3)

The petition manager drafts the acknowledgment letter and *Federal Register* notice and coordinates all information required from the professional staff within his or her organization and other organizations and from OI if a wrongdoing issue is under consideration. The petition manager also advises his or her management of the need for OGC review and advice regarding a petition in special cases. An Associate Director of the Office of Nuclear Regulation (NRR), a Division Director in the Office of Nuclear Material Safety and Safeguards (NMSS), or the Director of the Office of Enforcement(OE) makes a request for OGC involvement to the OGC special counsel assigned to 2.206 matters. (a)

The petition manager ensures that the petitioner is notified at least every 60 days of the status of the petition, or more frequently if significant actions occur. The petition manager makes the bimonthly status reports by telephone and should not leave a message on a voice mail message system unless repeated efforts to contact the petitioner are unsuccessful. The petition manager keeps up-to-date on the status of the petition so that reasonable detail can be provided with the status reports. However, the status report to the petitioner will not indicate—(b)

- An ongoing OI investigation, unless approved by the Director, OI (i)
- The referral of the matter to DOJ (ii)
- Enforcement action under consideration (iii)

The petition manager also will make the following telephone contacts with the petitioner: (c)

- Within 1 week after receipt of the petition and before the petition review board meeting, contact the petitioner to explain the public nature of the 2.206 petition process. During this contact, offer the petitioner an opportunity to have one representative give a presentation to the petition review board. The petitioner (or representative) may participate in person or by teleconference on a recorded line and only for the purpose of explaining the requested actions, their bases, and answering staff questions. The presentation will be limited to about a half hour and will be transcribed. Treat the transcription as a supplement to the petition and send a copy of the transcription to the petitioner and to the same distribution as the original petition. (i)

General (A) (continued)

Petition Manager Actions (3) (continued)

- After the petition review board meets, and before issuance of the acknowledgment letter, inform the petitioner as to whether or not the petition qualifies as a 2.206, disposition of any requests for immediate action, how the review will proceed, and that an acknowledgment letter is coming. (ii)

- Before dispatching the director's decision (or partial decision), inform the petitioner of the imminent issuance of the decision and the substance of the decision. (iii)

- When the director's decision has been signed, promptly send a copy electronically or by fax, if possible, to the petitioner. (iv)

Director's Decision (B)

The staff normally prepare a partial director's decision when some of the issues associated with the 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 consider the results of the OI investigation, if available, in completing the action on the petition. (1)

Management Directive 8.8, "Management of Allegations," provides agency policy with regard to notifying OI of wrongdoing matters, as well as initiating, prioritizing, and terminating investigations. The petition manager should become familiar with the current version of this directive 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 is limited to those having a need-to-know. Regarding a 2.206 petition, the assigned office director, or his designee, maintains copies of any documents required and ensures that no copies of documents related to an OI investigation are placed in the docket file, the agency's document management system, or the Public Document Room (PDR), without the approval of the Director, OI. (3)

Director's Decision (B) (continued)

The petition manager submits the completed draft decision to his or her management for review. After management's review, the petition manager incorporates any proposed revisions in the decision. If the decision is based on or references a completed OI investigation, OI must concur in the accuracy and characterization of the OI findings and conclusions that are used in the decision. (4)

If appropriate, the petition manager obtains OE management's review of and concurrence in the draft director's decision for potential enforcement implications. (5)

Granting the Petition (C)

Upon granting the petition, in whole or in part, the petition manager prepares a "Director's Decision Under 10 CFR 2.206" for the office director's signature. The decision explains the bases upon which the petition has been granted and identifies the actions that NRC staff have taken or will take to grant all or that portion of the petition. The Commission may grant a request for enforcement action, in whole or in part, and also may take action to satisfy the safety concerns raised by the petition, although such action is not necessarily an enforcement action. A petition is characterized as being granted in part when NRC did not grant the action as asked but took other action to address the underlying safety problem. If the petition is granted in full, the director's decision explains the bases for granting the petition and states that the Commission's action resulting from the director's decision is outlined in the Commission's order or other appropriate communication. (1)

If the petition is granted by issuing an order, the petition manager prepares a letter to transmit the order to the licensee. He or she prepares another letter to explain to the petitioner that the petition has been granted and encloses a copy of the order. Copies of the director's decision and *Federal Register* notice to be sent to the licensee and individuals on the service list(s) are dispatched simultaneously with the petitioner's copy. (2)

Denying the Petition (D)

Upon denial of the petition, in whole or in part, the petition manager prepares a "Director's Decision Under 10 CFR 2.206" for the office director's signature. The decision explains the bases for the denial and discusses all matters raised by the petitioner in support of the request. If appropriate, the decision transmittal letter acknowledges that

Denying the Petition (D) (continued)

the petitioner identified valid issues and specifies the corrective actions that have been or will be taken to address these issues, notwithstanding that some of all of the petitioner's specific requests for action have not been granted. The office director sends a letter to the petitioner transmitting the director's decision, along with a *Federal Register* notice explaining that the request has been denied. (1)

If an OI investigation is completed either before granting or denying the petition, the petition manager contacts OI and OE to coordinate NRC's actions when the wrongdoing matter has been referred to DOJ. It may be necessary to withhold action on the petition in keeping with the memorandum of understanding with DOJ. (2)

Issuance of Director's Decision (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 or administrative staff contacts the Office of the Secretary (SECY) 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. Note that the director's decision itself is not published in the *Federal Register*; only the notice of its availability, containing the substance of the decision, is published (see Exhibit 4). (1)

The assigned office director signs the *Federal Register* notice. After the notice is signed, it is forwarded to the Rules and Directives Branch, Office of Administration (ADM/DAS/RDB), for transmittal to the Office of the Federal Register for publication. (2)

Distribution (F)

The administrative staff of the assigned office reviews the 10 CFR 2.206 package before it is dispatched and determines appropriate distribution. The administrative staff also performs the following actions on the day the director's decision is issued: (1)

- Telephones the Rulemakings and Adjudications Staff, SECY, to advise the staff that the director's decision has been issued. (a)
- Immediately hand-carries the listed material to the following offices (in the case of the petitioner, promptly dispatch the copies.): (b)

Distribution (F) (continued)

- Rulemakings and Adjudications Staff, SECY (i)
  - Five copies of the director's decision (*a*)
  - Two courtesy copies of the entire decision package including the distribution and service lists. Ensure that documents referenced in the decision are publicly available in the NRC Public Document Room (*b*)
  - Two copies of the incoming petition and any supplement(s) (*c*)
- Petitioner (ii)
  - Signed original letter (*a*)
  - Signed director's decision (*b*)
  - A copy of the *Federal Register* notice (*c*)
- Chief, Rules and Directives Branch (iii)
  - Original signed *Federal Register* notice (*a*)
  - Five paper copies of the notice (*b*)

Promptly fulfill these requirements because the Commission has 25 calendar days from the date of the decision to determine whether or not the director's decision should be reviewed. (2)

Although 2.206 actions are controlled as green tickets, use the following guidelines when distributing copies internally and externally: (3)

- Attach the original 2.206 petition and any enclosure(s) to the Docket or Central File copy of the first response (acknowledgment letter). Issue copies to the appropriate licensees and individuals on the docket service list(s). (a)
- When action on a 2.206 petition is completed, the petition manager should ensure that all publicly releasable documentation is placed in the PDR and the agency document control system. (b)
- The distribution list should include appropriate individuals and offices as determined by the assigned office. (c)

Followup Actions (G)

The administrative staff of the assigned office completes the following actions within 2 working days of issuance of the director's decision:

- Provide one paper copy of the director's decision to the OGC special counsel assigned to 2.206 matters. (1)
- Copy the final version of the director's decision onto a diskette in WordPerfect. Send this diskette and two paper copies of the signed director's decision to the NRC Issuances (NRCI) Project Officer, Electronic Publishing Section (EPS), Publishing Services Branch (PSB), Office of the Chief Information Officer (OCIO). (2)
- When writing opinions, footnotes, or partial information (such as errata) on the diskette, 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. (3)
- Electronically mail a signed, dated, and numbered copy of the director's decision to NRCWEB for the NRC Home Page. (4)
- Electronically prepare a headnote, which is a summary of the petition consisting of no more than two paragraphs describing what the petition requested and how the director's decision resolved or closed out the petition. Electronically send the headnote to the PSB, OCIO, for monthly publication in the NRC Issuances, NUREG-0750. The headnotes should reach PSB before the 5th day of the month following the issuance of the director's decision. (5)

Commission Actions (H)

SECY informs the Commission of the availability of the director's decision. The Commission, at its discretion, may determine to 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.

Exhibit 1

Sample Acknowledgment Letter

[Petitioner's Name]
[Petitioner's Address]

Dear Mr. :

Your petition dated **[insert date]** and addressed to the **[insert addressee]** has been referred to me pursuant to 10 CFR 2.206 of the Commission's regulations. You request **[state petitioner's requests]**. As the basis for your request, you state that **[insert basis for request]**. I would like to express my sincere appreciation for your effort in bringing these matters to my attention.

Your request to **[insert request for immediate action]** at **[insert facility name]** is **[granted or denied]** because **[staff to provide explanation]**.

As provided by Section 2.206, we will take action on your request within a reasonable time. I have assigned **[first and last name of petition manager]** to be the petition manager for your petition. Mr. **[last name of petition manager]** can be reached at **[301–415–extension of petition manager]** Your petition is being reviewed by **[organizational units]** within the Office of **[name of appropriate Office]**. **If necessary, add**: I have referred to the NRC Office of the Inspector General (OIG) those allegations of NRC wrongdoing contained in your petition. I have enclosed for your information a copy of the notice that is being filed with the Office of the *Federal Register* for publication. I have also enclosed for your information a copy of Management Directive 8.11 on the public petition process.

Sincerely,

[Office Director]

Enclosures: *Federal Register* Notice
Management Directive 8.11 re: Petition Process

cc: **[Licensee (w/copy of incoming 2.206 request) & Service List]**

Exhibit 2

[7590–01–P]

Sample *Federal Register* Notice

U.S. NUCLEAR REGULATORY COMMISSION

Docket No(s).

License No(s).

[Name of Licensee]

RECEIPT OF REQUEST FOR ACTION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated [**insert date**], [**insert petitioner's name**] (petitioner) has requested that the NRC take action with regard to [**insert facility or licensee name**]. The petitioner requests [**state petitioner's requests**].

As the basis for this request, the petitioner states that [**state petitioner's basis for request**].

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of [**insert action office**]. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. [**If necessary, add**] By letter dated _____ , the Director (**granted or denied**) petitioner's request for [**insert request for immediate action**] at [**insert facility/licensee name**]. A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

FOR THE NUCLEAR REGULATORY COMMISSION

[**Office Director**]

Dated at Rockville, Maryland

This _____ day of _____, 1999.

Exhibit 3

Sample One Step Acknowledgment / Denial Letter

[Insert petitioner's name & address]

Dear **[insert petitioner's name]**:

In a letter dated **[insert date]**, to **[OEDO/or addressee, NRC]**, signed by you and submitted pursuant to 10 CFR 2.206, you requested that the NRC order the **[insert facility or licensee name]** to be immediately shut down and remain shut down until either (1) all of the failed fuel assemblies are removed from the reactor core, or (2) the plant's design and licensing bases are properly updated to reflect continued operation with failed fuel assemblies. Attached to the petition was a copy of a report dated April 2, 1998, titled "Potential Nuclear Safety Hazard – Reactor Operation With Failed Fuel Cladding."

The attached report, asserts that existing design and licensing requirements for nuclear power plants preclude their operation with known fuel cladding leakage. The report recommends that the NRC take steps to prohibit nuclear power plants from operating with fuel cladding damage and specifically recommends that plants be shut down when fuel leakage is detected. The report also recommends that safety evaluations be included in plant licensing bases that consider the effects of operating with leaking fuel to justify operation under such circumstances.

Your petition stated that, because **[insert facility or licensee name]** was operating with known fuel damage, it is possible that significantly more radioactive material would be released to the reactor coolant system during a transient or accident than during steady-state operation; therefore, the design-basis accident analysis does not bound operation with known fuel cladding failures. In addition, the petition stated that the licensee appeared to be violating its licensing basis for worker radiation protection under the as low as is reasonably achievable (ALARA) program because industry experience has demonstrated that reactor operation with failed fuel cladding increases radiation exposure for plant workers.

The NRC has been observing the licensee's response to this issue since the licensee first received indication on March 25, 1999, of a potential leaking fuel rod on Unit 1. The licensee reviewed radiochemistry data that indicated the integrity of the fuel cladding had been compromised. Subsequent analysis revealed an increase in the dose-equivalent iodine that remained significantly below the limit allowed by technical specifications. After locating the leaking fuel assembly, the licensee suppressed the flux around the bundle by fully inserting three adjacent control rods. The staff finds the licensee's actions timely and appropriate.

Exhibit 3 (continued)

As you noted in your petition, you have previously submitted petitions on the **[insert facility or licensee name]** nuclear plant(s) after learning that these plants were operating with known fuel leakage. These petitions also based the requested actions on your report of April 2, 1998. The NRC responded to these petitions by a director's decision dated April 18, 1999, which is provided as an enclosure to this letter. In its decision, the staff presented its evaluation of the report which addressed the generic safety concerns for plants operating with known fuel cladding leakage. The staff concluded that operation with a limited amount of leaking fuel is within a plant's licensing basis and, in itself, does not violate ALARA-related regulations. We have compared the staff's evaluation in that director's decision against the plant-specific situation at **[insert facility or licensee name]** and have determined that the generic conclusions are applicable.

We have reviewed your letter of April 5, 1999, and find that the issues raised in the petition have been addressed in the director's decision dated April 18, 1999. The petition does not raise any significant new information about safety issues which were adequately addressed in the director's decision issued before and, therefore, does not meet the criteria for consideration under 10 CFR 2.206.

Thank you for bringing these issues to the NRC. I trust that this letter and the enclosed director's decision are responsive to your concerns.

Sincerely,

[Insert Division Director's Name]

[Office of [insert Division's Name]

Docket Nos. [50-, 50-]

Enclosure: Director's Decision 99-08

cc w/encl: See next page

Exhibit 4

[7590–01–P]

Sample *Federal Register* Notice for Director's Decision

U.S. NUCLEAR REGULATORY COMMISSION

Docket No(s).

License No(s).

[Name of Licensee]

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, **[name of office]**, has issued a director's decision with regard to a petition dated **[insert date]**, filed by **[insert petitioner's name]**, hereinafter referred to as the "petitioner." The petition concerns the operation of the **[insert facility or licensee name]**.

The petition requested that **[insert facility or licensee name]** should be **[insert request for enforcement action]**. **[If necessary, add]** The petitioner also requested that a public hearing be held to discuss this matter in the Washington, DC, area.

As the basis for the **[insert date]** request, the petitioner raised concerns stemming from **[insert petitioner's supporting basis for the request]**. The **[insert petitioner's name]** considers such operation to be potentially unsafe and to be in violation of Federal regulations. In the petition, a number of references to **[insert references]** were cited that the petitioner believes prohibit operation of the facility with **[insert the cause for the requested enforcement action]**.

The petition of **[insert date]** raises concerns originating from **[insert summary information on more bases/rationale/discussion and supporting facts used in the disposition of the petition and the development of the director's decision]**.