



SECRETARY

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

March 22, 2013

COMMISSION VOTING RECORD

DECISION ITEM: SECY-12-0160

TITLE: PROPOSED RULE: PETITION FOR RULEMAKING
PROCESS (RIN 3150-AI30); EXPANDED AUTHORITY OF
EXECUTIVE DIRECTOR FOR OPERATIONS TO DENY
PETITIONS FOR RULEMAKING UNDER MANAGEMENT
DIRECTIVE 6.3

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of March 22, 2013.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink that reads "Kenneth R. Hart".

Kenneth R. Hart, Acting
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-12-0160

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MACFARLANE	X	X			X	3/14/13
COMR. SVINICKI	X	X			X	2/19/13
COMR. APOSTOLAKIS	X				X	2/6/13
COMR. MAGWOOD	X	X			X	1/16/13
COMR. OSTENDORFF	X				X	1/10/13

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN MACFARLANE

SUBJECT: SECY-12-0160 – PROPOSED RULE: PETITION FOR RULEMAKING PROCESS (RIN 3150-AI30); EXPANDED AUTHORITY OF EXECUTIVE DIRECTOR FOR OPERATIONS TO DENY PETITIONS FOR RULEMAKING UNDER MANAGEMENT DIRECTIVE 6.3

Approved X Disapproved X Abstain

Not Participating

COMMENTS: Below X Attached X None

I approve, subject to the attached edits, publication of the proposed rule on petitions for rulemaking in the *Federal Register*. I also approve the edits Commissioner Apostolakis has made to the letters enclosed in the supplemental material provided with SECY-12-0160.

I disapprove both of the staff's proposals to expand the delegation of authority to the Executive Director for Operations to deny, in whole or in part, petitions for rulemaking. I appreciate the staff's thorough discussion of the issues in SECY-12-0160, but do not find that the number of petitions for rulemaking the agency has received in recent years is so great that it warrants such action.



SIGNATURE

3/14/13

DATE

Entered on "STARS" Yes X No

AMM edits

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2

RIN 3150-AI30

[NRC-2009-0044]

Revisions to the Petition for Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to streamline its process for addressing petitions for rulemaking (PRMs). The proposed amendments are intended to improve transparency and make the PRM process more efficient and effective.

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM DATE OF PUBLICATION]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC's requirements, policies, and practices governing the PRM process have remained substantially unchanged since their initial issuance in 1979 (44 FR 61322; October 25, 1979). During the past 20 years, the NRC has received an average of nine PRMs per year and plans its budget and assigns resources based on this average. Recently, however, some years have beginning in 2007 and continuing through 2012, the NRC has experienced a dramatic increase in the number of PRMs submitted for consideration, docketing 25 PRMs in Fiscal Year (FY) 2011 alone. Those increases in PRMs have presented a significant resource challenge to the NRC.

In a memorandum to the other Commissioners entitled "Streamlining the NRR [Office of Nuclear Reactor Regulation] Rulemaking Process" (COMNJD-06-0004/COMEXM-06-0006) and dated April 7, 2006 (ADAMS Accession No. ML060970295), Chairman Nils J. Diaz and Commissioner Edward McGaffigan, Jr., proposed that, because of the general increase in rulemaking activities, the NRC staff should streamline its rulemaking process by removing unnecessary constraints, while simultaneously enhancing transparency of and public

participation in the process. The memorandum also invited the development of additional mechanisms for "streamlining and increasing the transparency of the rulemaking process, thus allocating the appropriate level of resources for the most important rulemaking actions and ensuring that the staff's hands are not tied by perceived or real procedural prerequisites that are necessary for a given rulemaking."

In a staff requirements memorandum (SRM) dated May 31, 2006 (ADAMS Accession No. ML061510316), responding to COMNJD-06-0004/COMEXM-06-0006, the Commission directed the NRC staff to undertake numerous measures to streamline the rulemaking process, including a direction to evaluate the overall effectiveness of the recently completed interoffice Rulemaking Process Improvement Implementation Plan (ADAMS Accession No. ML031360205) and to "further seek to identify any other potential options that could streamline the rulemaking process." The Commission also instructed the NRC staff to identify other potential options that could streamline the rulemaking process for all program offices.

In response to the Commission's directives, the NRC staff provided its recommendations to the Commission in SECY-07-0134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," dated August 10, 2007 (ADAMS Accession No. ML071780644). A recommendation to review the NRC's PRM process with the objective to reduce the time needed to complete an action was included in SECY-07-0134. The NRC staff also recommended that the NRC review the procedures used by other Federal agencies to process PRMs in order to identify best practices that could make the NRC's PRM process more timely and responsive, while also ensuring that PRMs are handled in an open and objective^{transparent} manner and in compliance with the Administrative Procedure Act (APA), Title 5 of the *United States Code* (U.S.C.), Section 551 *et seq.* In an SRM responding to SECY-07-0134, dated October 25, 2007 (ADAMS Accession No. ML072980427), the Commission

indicated support for the NRC staff's recommendation to review the PRM process: "The Petition for Rulemaking process needs some increased attention and improvement. The staff's overall effort to improve the petition for rulemaking process should focus on provisions that would make the NRC's process more efficient while improving the process' transparency and consistency."

Concurrently, in an SRM responding to COMGBJ-07-0002, "Closing Out Task Re: Rulemaking on [part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR)] Tables S3 and S4," dated August 6, 2007 (ADAMS Accession No. ML072180094), the Commission ~~approved closing the docket for a specific PRM that it described as "decades old." In so doing, the Commission again directed the NRC staff to "consider developing a process for dispositioning a petition in a more effective and efficient manner so that existing petitions that are deemed old can be closed out in a more timely manner and prevent future petitions from remaining open for periods longer than necessary."~~

To implement the Commission's directions, the NRC staff examined the regulations, policies, procedures, and practices that govern the NRC's PRM process, as well as the practices and processes used by several other Federal agencies to resolve PRMs. This proposed rule reflects the NRC's goal to make its PRM process more efficient and effective, while enhancing transparency and maintaining the opportunity for public participation.

III. Discussion

The administrative procedures that a Federal agency must follow in issuing a rule are codified in the APA, 5 U.S.C. 553. Paragraph 553(e) provides that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." In addition, 5 U.S.C. 555(e) provides that "[p]rompt notice shall be given of the denial in whole or in

part of a written application, petition, or other request of an interested person made in connection with any agency proceeding" and that "[e]xcept in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial." However, the APA does not provide further detail on how agencies should disposition a PRM or what constitutes "prompt" notice. ~~There is wide variation among Federal agencies on how PRMs are processed.~~

The NRC's requirements for rulemaking are set forth in 10 CFR part 2, "Agency Rules of Practice and Procedure," subpart H, "Rulemaking." In particular, 10 CFR 2.802, "Petition for rulemaking," and 2.803, "Determination of petition," establish the NRC framework for disposition of a petition for rulemaking concerning NRC regulations. The NRC's requirements for PRMs have remained substantially unchanged since their initial issuance in 1979, and the NRC's processes and procedures for PRMs historically have been established by and implemented through internal NRC policies and practices. To improve the PRM process, the NRC has reviewed both its regulatory framework associated with the PRM process and its internal policies, procedures, and practices.

A. NRC's Current PRM Process

Much of the NRC's PRM process historically has been established by and implemented through internal policies and practices. The proposed rule would codify NRC requirements currently included in its internal policies and practices regarding PRMs to increase transparency, ~~and provide greater clarity to the public.~~

In the current process, upon receipt of a PRM, the NRC acknowledges receipt to the petitioner and publishes a notice of receipt in the *Federal Register* to inform the public that the

completing a regulatory basis for rulemakings categorized as lower priority may take even longer. As such, 3 or more years may pass between the NRC's determination of which course of action to follow on a PRM and the agency's final disposition of the PRM by publishing the final rule addressing the PRM issues in the *Federal Register*.

Under current regulations, PRMs are considered "open" until the final rule is published, despite the NRC's decision to address the petitioner's issues in a rulemaking action and its progress toward final disposition of the PRM. Because of this "open" status, the petitioner, other stakeholders, and the public are likely to be unaware of the NRC's progress or determination of the PRM's merits. As part of its internal practice, the NRC strives to notify the petitioner and the public once it has made a determination on whether to consider the PRM issues in the rulemaking process. This proposed rule would codify and explain the process for administratively closing a PRM docket and notifying the public of the NRC's determination on the merits. This process would result in greater transparency of the NRC's course of action toward final disposition of a PRM.

B. Need for Improvements in the PRM Process

The NRC has limited resources available for processing PRMs, and the yearly-increases in PRMs have presented significant resource challenges to the NRC. For example, the NRC historically publishes for public review and comment the majority of PRMs that it receives. However, the PRMs published for public comment include some PRMs that do not provide sufficient information for NRC staff or public stakeholder evaluation. Additionally, some PRMs are published for public comments that ~~clearly~~ do not warrant further consideration (i.e., when the NRC's regulations already provide what the PRM is requesting or when the scope of the

PRM is outside the regulatory authority of the NRC). An earlier review identifying insufficient and infeasible PRMs would reduce the number of PRMs that are docketed and require full review by the NRC. Additionally, an initial sufficiency and feasibility screening review would promote more efficient use of rulemaking resources by focusing efforts on the remaining PRMs that contain sufficient information for a detailed review.

C. Proposed Changes to the PRM Process

The proposed rule would: (1) clarify and codify NRC's current policies and practices on the NRC's actions upon receipt of a PRM and at other stages of the PRM process; (2) clarify and improve the current policies and practices for evaluating PRMs, and communicating to the petitioner and the public information on the status of NRC-PRMs and rulemaking activities addressing PRMs; and (3) improve the process for resolving PRMs, including establishing an administrative process for closing the PRM docket to reflect agency action for the PRM. The proposed amendments are intended to enhance the consistency, timeliness, and transparency of the NRC's actions and to increase the efficient use of the NRC's resources in the PRM process.

The NRC is proposing the following changes to its regulations for the PRM process:

1. Section 2.802(a) would be amended to reflect updates in the NRC's internal system for receiving electronic submissions of PRMs. Petitioners submitting PRMs through e-mail would be instructed to send the PRM to Rulemaking.Comments@nrc.gov.
2. Section 2.802(b), which contains the requirements concerning consultation assistance that the NRC staff may provide to the petitioner, would be expanded beyond the pre-filing stage, allowing petitioners to consult directly with the NRC staff before and after filing a PRM with the

proceeding related to their PRMs would be required to file a motion that complies with the requirements in 10 CFR part 2, subpart C, "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings." Requirements for petitioners who are *not* participants in an NRC licensing proceeding related to their PRMs would be listed in § 2.802(e)(2), including the following requirements: concurrent submission of both the suspension request and the PRM, service on the applicant by the petitioner of both the suspension request and the PRM, and certification that copies of both the suspension request and the PRM have been provided to all participants and the presiding officer of the related licensing proceeding.

5. Section 2.802(e) would be replaced with new information that would inform petitioners where to submit a request to amend or withdraw their PRMs and what information to include in their request, namely the docket number the NRC assigned to the PRM (e.g., PRM-50-52) and the date the PRM was submitted originally. The proposed replacement language would ease administrative difficulties on the NRC staff because an amendment or withdrawal request would be linked more quickly with the related PRM docket, which would streamline the PRM process. Also, the proposed replacement language would advise the petitioner where to submit these requests, which would enhance the availability of information and transparency of the PRM process.

6. All current provisions in § 2.802 addressing the NRC's actions on a PRM would be removed from this section and transferred to § 2.803. As restructured, § 2.803 would contain all of the NRC's actions on a PRM, with the exception of PRMs on design certification rules from applicants that intend to supply the design (currently in §§ 2.811–2.817). ~~Using the proposed~~

~~amendments for explanatory convenience.~~ The NRC currently performs the following actions upon receipt of a PRM: The NRC notifies the petitioner of receipt as described in proposed § 2.803(a) and evaluates the PRM, including any information submitted under proposed § 2.803(c), according to the acceptance criteria in proposed § 2.803(b). Internal policy has historically dictated this process, and the NRC is proposing to add a provision in the regulations to codify this process.

7. The acceptance criteria and acceptance review process described in existing § 2.802(e) would be moved to proposed § 2.803(b) and amended to state clearly that the NRC will not accept a PRM for review if it does not include the information required under current § 2.802(c). The acceptance review process also would be modified to add two new criteria in § 2.803(b) and (c): Before accepting a PRM for docketing, the NRC would perform a screening review to ensure that the changes requested in the petition are within the legal authority of the NRC and that the PRM raises a potentially valid issue that warrants further detailed consideration by the NRC (e.g., confirm that the NRC's regulations do not already provide what the PRM is requesting and that the issue is not already under consideration by the Commission).

8. Information on the NRC's discretion to request public comment on a PRM, currently in § 2.802(e), and the NRC's discretion to hold a hearing on a PRM, currently discussed in § 2.803, would be moved to proposed § 2.803(g) ~~and amended for plain language.~~

9. The addition of specific criteria under proposed § 2.803(h) for the NRC's full review of a PRM would establish the considerations that the NRC may take into account when making a determination on the course of action to resolve a PRM. The NRC's process for disposition of a PRM historically has been contained in internal policy, and the NRC is proposing to place these considerations in the regulations to enhance the transparency of its PRM process. These

proposed considerations for resolving a PRM are based on the NRC's last 30 years of experience in processing PRMs, insights from the NRC initiative to streamline its PRM process, and information from the NRC's review of other agencies' PRM regulations and practices. The proposed considerations would allow the NRC to examine the merits of the PRM, the immediacy of the concern, the availability of NRC resources, whether the NRC is already considering the issues in other NRC processes, the relative priority of the issues raised in the PRM, any public comments (if comments are requested), and the NRC's past decisions and current policy on the issues raised in the PRM.

10. The process for administrative closure of a PRM docket, once the NRC has determined its course of action for the PRM would be provided in § 2.803(h)(2). The proposed requirements would provide two categories, derived from the NRC's recent review of the PRM process, for closing a PRM docket once the NRC has determined its course of action: (1) denial of the PRM in its entirety, indicating a determination not to pursue a rulemaking action to address the issues raised in the PRM (this would also constitute final "resolution" of the PRM); or (2) initiation of a rulemaking action addressing some or all the requested rule changes in the PRM. Initiation of a rulemaking action may take one of two forms: (i) initiation of a new, "standalone" rulemaking focused on some or all of the matters raised in the PRM; or (ii) integration of the PRM into an existing or planned rulemaking process (including the early stages of an NRC effort to decide whether to pursue rulemaking, e.g., when the NRC is considering whether to develop a regulatory basis or to issue an advance notice of proposed rulemaking). In either case, the PRM docket would be closed, although the PRM itself would not be completely and finally "resolved" until the NRC acts on the last remaining portion of the PRM's request. Final NRC action on the PRM ("resolution") would be a final rule addressing

the petitioner's requested changes, a final rule addressing some (but not all) of the petitioner's requested changes, or a notice published in the *Federal Register* of the NRC's decision not to address the petitioner's requested changes in a rulemaking action.

11. In § 2.803(h)(2)(ii), three common examples of potential rulemaking actions would be provided to inform the petitioner of potential rulemaking paths for granting a PRM: (1) initiate a new rulemaking; (2) address the PRM in an ongoing rulemaking; or (3) address the PRM in a planned rulemaking. The NRC would publish a *Federal Register* notice to inform the public of its determined course of action, which would enhance transparency of the NRC's PRM process and communicate better the NRC's planned approach to the PRM. Implementing this process would enhance the NRC's ability to close PRMs efficiently and effectively.

12. Section 2.803(i)(2) would explain that the NRC will notify the petitioner in writing and also publish a notice in the *Federal Register* if the NRC closes a PRM under § 2.802(h)(2)(ii) but subsequently decides not to carry out the planned rulemaking to publication of a final rule. These notices would explain the basis for the NRC's decision not to carry out the planned rulemaking to publication and not to include the PRM in a rulemaking action.

13. The addition of § 2.803(i) would explain how a PRM ultimately is resolved under the APA and would distinguish final resolution of a PRM from administrative closure of a PRM docket, described in proposed § 2.803(h)(2). Resolution of a PRM occurs when the NRC publishes a *Federal Register* notice informing the public that any planned regulatory action related to the PRM has been concluded. For rulemaking actions (~~e.g., new, planned, or ongoing rulemakings related to the PRM~~), resolution requires publication in the *Federal Register* of the final rule related to the PRM, which would include a discussion of how the published final rule addresses the issues raised in the PRM. Also, proposed § 2.803(i) would note that the

NRC's denial of the PRM or the petitioner's withdrawal of the PRM at any stage of the regulatory process would conclude all planned regulatory action related to the PRM. As applicable, the *Federal Register* notice resolving the PRM would include a discussion of the NRC's grounds for denial or information on the withdrawal request that the petitioner submitted.

The NRC is no longer publishing a semiannual summary of PRMs before the NRC, so language in existing § 2.802(g) would be removed. Proposed new paragraphs § 2.803(j)(1) and (3) would explain that the public may view the status of rulemakings currently active with the Commission at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/rulemaking-dockets/index.html> and the most current information on PRMs at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html>. The new language would inform the public that it also may view the status of currently active rulemakings and PRMs at <http://www.regulations.gov>. Using the Federal rulemaking Web site, <http://www.regulations.gov> (regulations.gov), would meet the requirement in the e-Government Act of 2002 that agencies use a single, Governmentwide resource for rulemaking activities to enhance transparency to the public. Proposed § 2.803(j)(2) would establish that the NRC will include a summary of planned and ongoing rulemakings in the Governmentwide *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Unified Agenda). The Unified Agenda is a semiannual compilation of summaries of the proposed and final rules that each Federal agency expects to issue during the next year. Summaries from the Unified Agenda for rules that are likely to have a significant economic impact on a substantial number of small entities are published in the *Federal Register*, and the full edition of the Unified Agenda is available online at the Office of Management and Budget (OMB) Web site <http://www.Reginfo.gov> and at the NRC Web site <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/unified-agenda.html>. By

[dockets/index.html](#).

Proposed new paragraph (d) would notify the public that the NRC will send all communications to the lead petitioner identified in the petition, according to proposed new paragraph 2.802(c)(3), and that this communication would constitute notification to all petitioners. Thus, any NRC obligation to inform a petitioner is satisfied when the NRC sends the required notification to the lead petitioner. The heading, *NRC communications with multiple petitioners*, would be added to describe the subject of the paragraph.

Newly designated § 2.803(e) through (f) would be marked "Reserved."

Proposed new paragraph (g) would add the heading, *Public comment on a petition for rulemaking; Hearings*, to indicate the subject of the paragraph. Proposed new paragraph § 2.803(g)(1) would incorporate information from existing § 2.802(e) text pertaining to the NRC's discretion to request public comment on a docketed PRM ~~and would amend the text for clarity and plain language~~. Information in existing § 2.802(e) that specifies how a PRM may be published for public comment in the *Federal Register* would be replaced by a concise statement specifying that the NRC, at its discretion, may solicit public comment on a docketed PRM.

When the NRC publishes an FRN requesting public comment on a PRM, the NRC's current practice is to include standard language in the FRN cautioning the public not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Proposed new § 2.803(g)(2) would include this caveat in the NRC's regulations to increase the likelihood that affected stakeholders will be aware of this practice.

Proposed new § 2.803(g)(3) would denote that no hearings will be held on a PRM unless the Commission determines to hold a hearing as a matter of discretion. This requirement currently exists in § 2.803, but it would be moved to new paragraph (g)(3) and amended for

clarity and plain language. The text “the Commission deems it advisable” would be replaced with “the Commission determines to do so, at its discretion.” This proposed amendment would clarify that the NRC has discretionary authority to hold a hearing on a docketed PRM.

Proposed new paragraph (h) would add the heading, *Determination of a petition for rulemaking; closure of docket on a petition for rulemaking* to indicate the subject of the paragraph. Existing regulations in § 2.803 require the NRC to resolve PRMs by either issuing a notice of proposed rulemaking or denying the petition. Proposed new paragraph (h)(1) of § 2.803 would codify a nonexclusive list of the methods and criteria that the NRC uses to determine a course of action for a PRM. Those methods and criteria include consideration of the issues raised in the PRM about its merits, the immediacy of an identified safety or security concern, the relative availability of resources, the relative issue priority compared to other NRC rulemaking activities, whether the NRC is already considering the issues in other NRC processes, the substance of public comments received, if requested, and the NRC’s past decisions and current policy.

Proposed new paragraph (h)(1)(i) would establish that determination of a PRM may be based upon the merits of the PRM. For the purpose of this rule, the term “merits” would include the completeness and technical accuracy of the documents, logic associated with the petitioner’s desired rule changes, and the appropriateness or worthiness of the desired changes compared to the current regulatory structure (i.e., existing regulations, associated regulatory guidance, and inspection program guidance).

Proposed new paragraph (h)(1)(ii) would indicate that determination of a PRM may be based upon the immediacy of the safety or security concerns raised in the PRM. By adding this paragraph, the NRC intends to first determine whether immediate regulatory action (e.g., a

requested, the NRC would consider the information commenters provided when determining a course of action for a PRM.

Proposed new paragraph (h)(1)(vi) would denote that determination of a PRM may be based on the NRC's past decisions and current policy related to the issues raised in the PRM.

This paragraph would establish that the NRC could consider past Commission decisions (e.g., policy statements, staff requirements memoranda, adjudicatory board decisions) when determining a course of action for a PRM.

Proposed new paragraph (h)(2) would establish a process for administrative closure of a PRM docket once the NRC has determined its course of action for the PRM using the methodology and criteria in proposed paragraph (h)(1). Proposed paragraph (h)(2) with the heading, *PRM Docket Closure*, would establish that a PRM docket would be administratively closed when the NRC responds to the PRM by taking a regulatory action and publishing a document in the *Federal Register* that describes this action. Proposed new paragraphs (h)(2)(i) and (ii) provide two specific categories for administrative closure of a PRM docket. In proposed paragraph (h)(2), the NRC would administratively close a PRM docket by taking a regulatory action in response to the PRM that establishes a course of action for the PRM. The NRC would publish a notice in the *Federal Register* describing the determined regulatory action, including the related Docket Identification Number (Docket ID), as applicable. Proposed paragraph (h)(2)(i) would explain that the NRC may administratively close a PRM docket by deciding not to undertake a rulemaking to address the issues that the PRM raised, effectively denying the PRM, and notifying the petitioner in writing why the PRM was denied. Proposed paragraph (h)(2)(ii) would explain that the NRC may administratively close a PRM docket by initiating a rulemaking action, such as addressing the PRM in an ongoing or planned rulemaking or initiating a new

displays a currently valid Office of Management and Budget control number.

X. Regulatory Analysis

The NRC did not prepare a draft regulatory analysis for this proposed rule because it is considered a minor, nonsubstantive amendment ~~that has no economic impact on NRC licensees or the public~~ and does not meet the threshold economic and policy requirements of OMB Circular A-4 guidance for the preparation of regulatory analyses. The amendments will neither impose new safety requirements nor relax existing ones and therefore do not call for the sort of safety/cost analysis described in the NRC's regulatory analysis guidelines in NUREG/BR-0058, Revision 4, "Regulatory Analysis Guidelines of the US NRC," September 2004 (ADAMS Accession No. ML042820192).

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if issued, have a significant economic impact on a substantial number of small entities.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule does not apply to this proposed rule because these amendments are administrative in nature and do not involve any provisions that would impose backfitting as defined in 10 CFR chapter 1, or are inconsistent with any of the

applicable) including the petitioner's organizational or corporate status, the petitioner's State of incorporation, the petitioner's registered agent, the name and authority of the individual who signed the petition on behalf of the organizational or corporate petitioner.

(iii) Present the specific problems or issues that the petitioner believes should be addressed through rulemaking, including any specific circumstances in which the NRC's codified requirements are incorrect, incomplete, inadequate, or unnecessarily burdensome;

(iv) Cite, enclose, or reference publicly available technical, scientific, or other data supporting the petitioner's assertion of the problems or issues;

(v) Present the petitioner's proposed solution to the problems or issues raised in the petition for rulemaking (e.g., a proposed solution may include specific regulations or regulatory language to add, amend, or delete in 10 CFR chapter I);

(vi) Provide an analysis, discussion, or argument that explains how the petitioner's proposed solution solves the problems or issues identified by the petitioner; and

(vii) Cite, enclose, or reference any other publicly available data or information supporting the petitioner's proposed solution.

(viii) For petitions requesting amendments of parts 30, 31, 32, 33, 34, 35, 36, 39, 40 or part 70 of this chapter concerning the exemption from licensing and regulatory requirements of or authorizing general licenses for any equipment, device, commodity or other product containing byproduct material, source material or special nuclear material, comply with 10 CFR 51.68 by submitting a separate document entitled "Petitioner's Environmental Report," which must contain the information specified in 10 CFR 51.45.

(2) To assist the NRC in its evaluation of the PRM, ~~the NRC strongly suggests that the~~ petitioner should clearly and concisely:

(i) Explain why the proposed rulemaking solution is within the authority of the NRC to

of the petition for rulemaking at any stage of the regulatory process. As applicable, the *Federal Register* notice will include a discussion of how the regulatory action addresses the issues raised by the petitioner, the NRC's grounds for denial of the petition for rulemaking, or information on the withdrawal request submitted by the petitioner. The notice will also include the NRC's response to any public comments received (if comments are requested), unless the NRC has indicated that it will not be providing formal written responses to each comment received.

Formatted: Font: 11 pt

(2) *NRC decision not to proceed with rulemaking after closure of a PRM docket.* If the NRC closes a PRM docket under paragraph (h)(2) of this section but subsequently decides not to carry out the planned rulemaking to publication of a final rule, then the NRC will notify the petitioner in writing of this decision and publish a notice in the *Federal Register* explaining the basis for its decision. The decision not to complete the rulemaking action will be documented as denial of the PRM in the docket file of the closed petition for rulemaking, in the Web sites, in the Unified Agenda, online in ADAMS and at <http://www.regulations.gov> as described in paragraph (jk) of this section.

(j) *Status of PRMs and rulemakings.*

(1) The NRC will document the most current information on active rulemakings at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/rulemaking-dockets/index.html> and the most current information on petitions for rulemaking at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html>.

(2) The NRC will include a summary of the NRC's planned and ongoing rulemakings in the Governmentwide *Unified Agenda of Federal Regulatory and Deregulatory Actions* (the

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-12-0160 – PROPOSED RULE: PETITION FOR RULEMAKING PROCESS (RIN 3150-AI30); EXPANDED AUTHORITY OF EXECUTIVE DIRECTOR FOR OPERATIONS TO DENY PETITIONS FOR RULEMAKING UNDER MANAGEMENT DIRECTIVE 6.3

Approved XX In Part Disapproved XX In Part Abstain _____

Not Participating _____

COMMENTS: Below XX Attached XX None _____

I approve for publication in the *Federal Register* the proposed amendments to Sections 2.802, "Petition for rulemaking – requirements for filing," 2.803, "Petition for rulemaking – NRC action," and 2.811, "Filing of standard design certification application; required copies" (Enclosure 1 to SECY-12-0160), subject to the attached edits. I further approve the edits offered by Commissioner Apostolakis to the supplemental material enclosed with SECY-12-0160.

The proposed rule, if promulgated, will improve clarity and facilitate awareness of the NRC's process for both petitioners and other stakeholders. I look forward to reviewing any public comment received.

I disapprove both proposals for further delegations of authority to the Executive Director for Operations to deny, in whole or in part, petitions for rulemaking, absent a showing that the Commission's continued, direct involvement in such determinations is causing unacceptable delay or has become otherwise unmanageable.



SIGNATURE

02/19/13

DATE

Entered on "STARS" Yes No _____

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2

RIN 3150-AI30

[NRC-2009-0044]

Revisions to the Petition for Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to streamline its process for addressing petitions for rulemaking (PRMs). The proposed amendments are intended to improve transparency and make the PRM process more efficient and effective.

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM DATE OF PUBLICATION]**.

Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC's requirements, policies, and practices governing the PRM process have remained substantially unchanged since their initial issuance in 1979 (44 FR 61322; October 25, 1979). During the past 20 years, the NRC has received an average of nine PRMs per year and plans its budget and assigns resources based on this average. Recently, Hhowever, beginning ~~in 2007 and continuing through 2012, the NRC has~~some years have experienced a dramatic increase in the number of PRMs submitted for consideration, docketing 25 PRMs in Fiscal Year (FY) 2011 alone. Thosee increases in PRMs ~~has~~ presented a significant resource challenge to the NRC.

In a memorandum to the other Commissioners entitled "Streamlining the NRR [Office of Nuclear Reactor Regulation] Rulemaking Process" (COMNJD-06-0004/COMEXM-06-0006) and dated April 7, 2006 (ADAMS Accession No. ML060970295), Chairman Nils J. Diaz and Commissioner Edward McGaffigan, Jr., proposed that, because of the general increase in rulemaking activities, the NRC staff should streamline its rulemaking process by removing unnecessary constraints, while simultaneously enhancing transparency of and public participation in the process. The memorandum also invited the development of additional mechanisms for "streamlining and increasing the transparency of the rulemaking process, thus allocating the appropriate level of resources for the most important rulemaking actions and ensuring that the staff's hands are not tied by perceived or real procedural prerequisites that are

necessary for a given rulemaking.”

In a staff requirements memorandum (SRM) dated May 31, 2006 (ADAMS Accession No. ML061510316), responding to COMNJD-06-0004/COMEXM-06-0006, the Commission directed the NRC staff to undertake numerous measures to streamline the rulemaking process, including a direction to evaluate the overall effectiveness of the recently completed interoffice Rulemaking Process Improvement Implementation Plan (ADAMS Accession No. ML031360205) and to “further seek to identify any other potential options that could streamline the rulemaking process.” The Commission also instructed the NRC staff to identify other potential options that could streamline the rulemaking process for all program offices.

In response to the Commission’s directives, the NRC staff provided its recommendations to the Commission in SECY-07-0134, “Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan,” dated August 10, 2007 (ADAMS Accession No. ML071780644). A recommendation to review the NRC’s PRM process with the objective to reduce the time needed to complete an action was included in SECY-07-0134. The NRC staff also recommended that the NRC review the procedures used by other Federal agencies to process PRMs in order to identify best practices that could make the NRC’s PRM process more timely and responsive, while also ensuring that PRMs are handled in an open and ~~objective~~ transparent manner and in compliance with the Administrative Procedure Act (APA), Title 5 of the *United States Code* (U.S.C.), Section 551 *et seq.* In an SRM responding to SECY-07-0134, dated October 25, 2007 (ADAMS Accession No. ML072980427), the Commission indicated support for the NRC staff’s recommendation to review the PRM process: “The Petition for Rulemaking process needs some increased attention and improvement. The staff’s overall effort to improve the petition for rulemaking process should focus on provisions that would make the NRC’s process more efficient while improving the process’ transparency and consistency.”

Concurrently, in an SRM responding to COMGBJ-07-0002, "Closing Out Task Re: Rulemaking on [part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR)] Tables S₃ and S₄," dated August 6, 2007 (ADAMS Accession No. ML072180094), the Commission approved ~~closing the docket for a specific PRM that it described as "decades old."~~ In so doing, the Commission again directed the NRC staff to "consider developing a process for dispositioning a petition in a more effective and efficient manner so that existing petitions that are deemed old can be closed out in a more timely manner and prevent future petitions from remaining open for periods longer than necessary."

To implement the Commission's directions, the NRC staff examined the regulations, policies, procedures, and practices that govern the NRC's PRM process, as well as the practices and processes used by several other Federal agencies to resolve PRMs. This proposed rule reflects the NRC's goal to make its PRM process more efficient and effective, while enhancing transparency and maintaining the opportunity for public participation.

III. Discussion

The administrative procedures that a Federal agency must follow in issuing a rule are codified in the APA, 5 U.S.C. 553. Paragraph 553(e) provides that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." In addition, 5 U.S.C. 555(e) provides that "[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding" and that "[e]xcept in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial." However, the APA does not provide further detail on how agencies should

disposition a PRM or what constitutes "prompt" notice. ~~There is wide variation among Federal agencies on how PRMs are processed.~~

The NRC's requirements for rulemaking are set forth in 10 CFR part 2, "Agency Rules of Practice and Procedure," subpart H, "Rulemaking." In particular, 10 CFR 2.802, "Petition for rulemaking," and 2.803, "Determination of petition," establish the NRC framework for disposition of a petition for rulemaking concerning NRC regulations. The NRC's requirements for PRMs have remained substantially unchanged since their initial issuance in 1979, and the NRC's processes and procedures for PRMs historically have been established by and implemented through internal NRC policies and practices. To improve the PRM process, the NRC has reviewed both its regulatory framework associated with the PRM process and its internal policies, procedures, and practices.

A. NRC's Current PRM Process

Much of the NRC's PRM process historically has been established by and implemented through internal policies and practices. The proposed rule would codify NRC requirements currently included in its internal policies and practices regarding PRMs to increase transparency, and provide greater clarity to the public.

In the current process, upon receipt of a PRM, the NRC acknowledges receipt to the petitioner and publishes a notice of receipt in the *Federal Register* to inform the public that the NRC has received the PRM. The NRC also notifies the petitioner in writing of the agency's action when it publishes a final rule or denial notice related to the PRM. The proposed rule would codify these actions to inform the public of NRC action upon receipt of a PRM and denial of issues in a PRM. If the NRC determines that the petition has merit and should be considered in a rulemaking, the NRC's rulemaking process (including regulatory basis development, as

progress toward final disposition of the PRM. Because of this “open” status, the petitioner, other stakeholders, and the public are likely to be unaware of the NRC’s progress or determination of the PRM’s merits. As part of its internal practice, the NRC strives to notify the petitioner and the public once it has made a determination on whether to consider the PRM issues in the rulemaking process. This proposed rule would codify and explain the process for administratively closing a PRM docket and notifying the public of the NRC’s determination on the merits. This process would result in greater transparency of the NRC’s course of action toward final disposition of a PRM.

B. Need for Improvements in the PRM Process

The NRC has limited resources available for processing PRMs, and the yearly increases in PRMs have presented significant resource challenges to the NRC. For example, the NRC historically publishes for public review and comment the majority of PRMs that it receives. However, the PRMs published for public comment include some PRMs that do not provide sufficient information for NRC staff or public stakeholder evaluation. Additionally, some PRMs are published for public comments that clearly do not warrant further consideration (i.e., when the NRC’s regulations already provide what the PRM is requesting or when the scope of the PRM is outside the regulatory authority of the NRC). An earlier review identifying insufficient and infeasible PRMs would reduce the number of PRMs that are docketed and require full review by the NRC. Additionally, an initial sufficiency and feasibility screening review would promote more efficient use of rulemaking resources by focusing efforts on the remaining PRMs that contain sufficient information for a detailed review.

C. Proposed Changes to the PRM Process

The proposed rule would: (1) clarify and codify NRC's current policies and practices on the NRC's actions upon receipt of a PRM and at other stages of the PRM process; (2) clarify and improve the current policies and practices for evaluating PRMs, and communicating to the petitioner and the public information on the status of NRC-PRMs and rulemaking activities addressing PRMs; and (3) improve the process for resolving PRMs, including establishing an administrative process for closing the PRM docket to reflect agency action for the PRM. The proposed amendments are intended to enhance the consistency, timeliness, and transparency of the NRC's actions and to increase the efficient use of the NRC's resources in the PRM process.

The NRC is proposing the following changes to its regulations for the PRM process:

1. Section 2.802(a) would be amended to reflect updates in the NRC's internal system for receiving electronic submissions of PRMs. Petitioners submitting PRMs through e-mail would be instructed to send the PRM to Rulemaking.Comments@nrc.gov.
2. Section 2.802(b), which contains the requirements concerning consultation assistance that the NRC staff may provide to the petitioner, would be expanded beyond the pre-filing stage, allowing petitioners to consult directly with the NRC staff before and after filing a PRM with the NRC. The proposed language in paragraphs (b)(1)-(3) would clarify what consultation assistance is permitted.
3. The information that a petitioner must include in a PRM pursuant to § 2.802(c) would be clarified and expanded. With these revisions, the NRC intends to reduce the number of insufficient PRMs submitted at the onset of the PRM review process by specifying the information that must be included for a PRM to be accepted for docketing. The existing criteria at § 2.802(c)(1)-(3) used to determine whether a PRM is complete would be revised to improve

suspension request and the PRM have been provided to all participants and the presiding officer of the related licensing proceeding.

5. Section 2.802(e) would be replaced with new information that would inform petitioners where to submit a request to amend or withdraw their PRMs and what information to include in their request, namely the docket number the NRC assigned to the PRM (e.g., PRM-50-52) and the date the PRM was submitted originally. The proposed replacement language would ease administrative difficulties on the NRC staff because an amendment or withdrawal request would be linked more quickly with the related PRM docket, which would streamline the PRM process. Also, the proposed replacement language would advise the petitioner where to submit these requests, which would enhance the availability of information and transparency of the PRM process.

6. All current provisions in § 2.802 addressing the NRC's actions on a PRM would be removed from this section and transferred to § 2.803. As restructured, § 2.803 would contain all of the NRC's actions on a PRM, with the exception of PRMs on design certification rules from applicants that intend to supply the design (currently in §§ 2.811–2.817). ~~Using the proposed amendments for explanatory convenience, t~~The NRC currently performs the following actions upon receipt of a PRM: *The NRC notifies the petitioner of receipt as described in proposed § 2.803(a) and evaluates the PRM, including any information submitted under proposed § 2.803(c), according to the acceptance criteria in proposed § 2.803(b). Internal policy has historically dictated this process, and the NRC is proposing to add a provision in the regulations to codify this process.*

7. The acceptance criteria and acceptance review process described in existing § 2.802(e) would be moved to proposed § 2.803(b) and amended to state clearly that the NRC will not accept a PRM for review if it does not include the information required under current § 2.802(c).

requirements would provide two categories, derived from the NRC's recent review of the PRM process, for closing a PRM docket once the NRC has determined its course of action: (1) denial of the PRM in its entirety, indicating a determination not to pursue a rulemaking action to address the issues raised in the PRM (this would also constitute final "resolution" of the PRM); or (2) initiation of a rulemaking action addressing some or all the requested rule changes in the PRM. Initiation of a rulemaking action may take one of two forms: (i) initiation of a new, "standalone" rulemaking focused on some or all of the matters raised in the PRM; or (ii) integration of the PRM into an existing or planned rulemaking process (including the early stages of an NRC effort to decide whether to pursue rulemaking, e.g., when the NRC is considering whether to develop a regulatory basis or to issue an advance notice of proposed rulemaking). In either case, the PRM docket would be closed, although the PRM itself would not be completely and finally "resolved" until the NRC acts on the last remaining portion of the PRM's request. Final NRC action on the PRM ("resolution") would be a final rule addressing the petitioner's requested changes, a final rule addressing some (but not all) of the petitioner's requested changes, or a notice published in the *Federal Register* of the NRC's decision not to address the petitioner's requested changes in a rulemaking action.

11. In § 2.803(h)(2)(ii), three common examples of potential rulemaking actions would be provided to inform the petitioner of potential rulemaking paths for granting a PRM: (1) initiate a new rulemaking; (2) address the PRM in an ongoing rulemaking; or (3) address the PRM in a planned rulemaking. The NRC would publish a *Federal Register* notice to inform the public of its determined course of action, which would enhance transparency of the NRC's PRM process and communicate better the NRC's planned approach to the PRM. Implementing this process would enhance the NRC's ability to close PRMs efficiently and effectively.

Proposed new paragraph (h)(1)(v) would provide that determination of a PRM may be based on the substance of any public comments received, if public comments are requested. Although the NRC might not request public comments on all PRMs, if public comments are requested, the NRC would consider the information commenters provided when determining a course of action for a PRM.

Proposed new paragraph (h)(1)(vi) would denote that determination of a PRM may be based on the NRC's past decisions and current policy related to the issues raised in the PRM. This paragraph would establish that the NRC could consider past Commission decisions (~~e.g., policy statements, staff requirements memoranda, adjudicatory board decisions~~) when determining a course of action for a PRM.

Proposed new paragraph (h)(2) would establish a process for administrative closure of a PRM docket once the NRC has determined its course of action for the PRM using the methodology and criteria in proposed paragraph (h)(1). Proposed paragraph (h)(2) with the heading, *PRM Docket Closure*, would establish that a PRM docket would be administratively closed when the NRC responds to the PRM by taking a regulatory action and publishing a document in the *Federal Register* that describes this action. Proposed new paragraphs (h)(2)(i) and (ii) provide two specific categories for administrative closure of a PRM docket. In proposed paragraph (h)(2), the NRC would administratively close a PRM docket by taking a regulatory action in response to the PRM that establishes a course of action for the PRM. The NRC would publish a notice in the *Federal Register* describing the determined regulatory action, including the related Docket Identification Number (Docket ID), as applicable. Proposed paragraph (h)(2)(i) would explain that the NRC may administratively close a PRM docket by deciding not to undertake a rulemaking to address the issues that the PRM raised, effectively denying the PRM, and notifying the petitioner in writing why the PRM was denied. Proposed paragraph (h)(2)(ii)

the PRM. For resolution of a PRM through withdrawal by the petitioner, the NRC would publish a notice in the *Federal Register* to inform the public that the petitioner has withdrawn the docketed PRM. Although the NRC expects that withdrawal requests would be submitted infrequently, proposed paragraph (i) would provide a mechanism for the NRC to resolve the petition and inform members of the public of the withdrawal and resolution of the PRM.

The existing text of § 2.802, paragraph (g), which indicates that a semiannual summary of PRMs before the Commission will be publicly available for inspection and copying, would be removed because the NRC no longer publishes this semiannual summary. Proposed new paragraph (j) of § 2.803 would explain where the public can view the status of PRMs and would add the heading, *Status of PRMs and rulemakings*, to indicate the subject of the paragraph. Proposed new paragraph (j)(1) would provide the Web site addresses for the most current information on PRMs and on rulemakings that are active with the Commission. Proposed new paragraph (j)(2) would indicate that the NRC will provide a summary of planned and existing rulemakings in the Governmentwide Unified Agenda. Proposed new paragraph (j)(3) would explain that information on all docketed PRMs, rulemakings, and public comments will be made available online in ADAMS and in the Federal Governmentwide rulemaking Web site at <http://www.regulations.gov>.

As previously discussed, if the NRC closes a PRM docket by initiating a rulemaking action under § 2.803(h)(2)(ii) but later determines that a final rule should not be published, the NRC will publish a notice in the *Federal Register* explaining the grounds for its denial of the PRM, including the reason for the NRC's decision not to issue a final rule. The notice will be added to the file of the previously closed PRM docket, and the status of the PRM will be updated and made available to the public as described in proposed paragraphs (k)(1) through (j)(3).

X. Regulatory Analysis

The NRC did not prepare a draft regulatory analysis for this proposed rule because it is considered a minor, nonsubstantive amendment ~~that has no economic impact on NRC licensees or the public~~ and does not meet the threshold economic and policy requirements of OMB Circular A-4 guidance for the preparation of regulatory analyses. The amendments will neither impose new safety requirements nor relax existing ones and therefore do not call for the sort of safety/cost analysis described in the NRC's regulatory analysis guidelines in NUREG/BR-0058, Revision 4, "Regulatory Analysis Guidelines of the US NRC," September 2004 (ADAMS Accession No. ML042820192).

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if issued, have a significant economic impact on a substantial number of small entities.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule does not apply to this proposed rule because these amendments are administrative in nature and do not involve any provisions that would impose backfitting as defined in 10 CFR chapter 1, or are inconsistent with any of the issue finality provisions in 10 CFR part 52.

signed the petition on behalf of the organizational or corporate petitioner.

(iii) Present the specific problems or issues that the petitioner believes should be addressed through rulemaking, including any specific circumstances in which the NRC's codified requirements are incorrect, incomplete, inadequate, or unnecessarily burdensome;

(iv) Cite, enclose, or reference publicly available technical, scientific, or other data supporting the petitioner's assertion of the problems or issues;

(v) Present the petitioner's proposed solution to the problems or issues raised in the petition for rulemaking (e.g., a proposed solution may include specific regulations or regulatory language to add, amend, or delete in 10 CFR chapter I);

(vi) Provide an analysis, discussion, or argument that explains how the petitioner's proposed solution solves the problems or issues identified by the petitioner; and

(vii) Cite, enclose, or reference any other publicly available data or information supporting the petitioner's proposed solution.

(viii) For petitions requesting amendments of parts 30, 31, 32, 33, 34, 35, 36, 39, 40 or part 70 of this chapter concerning the exemption from licensing and regulatory requirements of or authorizing general licenses for any equipment, device, commodity or other product containing byproduct material, source material or special nuclear material, comply with 10 CFR 51.68 by submitting a separate document entitled "Petitioner's Environmental Report," which must contain the information specified in 10 CFR 51.45.

(2) To assist the NRC in its evaluation of the PRM, ~~the NRC strongly suggests that the~~ petitioner should clearly and concisely:

(i) Explain why the proposed rulemaking solution is within the authority of the NRC to adopt; and

(ii) The petitioner must serve, in accordance with the requirements of 10 CFR 2.305, a copy of the petition for rulemaking and the request for suspension of the adjudicatory licensing proceeding on the applicant in the proceeding.

(iii) Copies of this request must be filed with all of the participants in the proceeding and with the presiding officer.

(f) *Amendment; Withdrawal.* If the petitioner wants to amend or withdraw a docketed petition for rulemaking, then the petitioner should include the docket number and the date that the original petition for rulemaking was submitted in a request addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by e-mail to Rulemaking.Comments@nrc.gov.

3. Revise § 2.803 to read as follows:

§ 2.803 Petition for rulemaking—NRC action.

(a) *Notification of Receipt.* Upon receipt of a petition for rulemaking, the NRC will

- (1) Acknowledge its receipt to the petitioner; and
- (2) Evaluate the petition for rulemaking, including supporting data submitted under § 2.802(c), for sufficiency according to the acceptance review criteria in § 2.803(b).

(b) *Acceptance Review.* If the NRC determines that the petition for rulemaking does not include the information required by § 2.802(c), that the regulatory change sought by the

petitioner is not within the legal authority of the NRC, or that the petition for rulemaking does not raise a potentially valid issue that warrants further consideration, then the NRC will notify the petitioner in writing and explain the deficiencies in the petition for rulemaking. The petitioner may resubmit the petition for rulemaking without prejudice.

(c) *Acceptance and Docketing.*

(1) The NRC will accept and assign a docket number to the petition for rulemaking if the NRC determines that:

(i) The petition for rulemaking includes the information required by paragraph 2.802(c),

(ii) The regulatory change sought by the petitioner is within the NRC's legal authority,
and

(iii) The petition for rulemaking raises a potentially valid issue that warrants further consideration.

(2) A copy of the docketed petition for rulemaking will be posted in the NRC's Agencywide Documents Access and Management System (ADAMS) and on the Federal rulemaking Web site at: <http://www.regulations.gov>. The NRC will publish a notice of receipt in the *Federal Register* informing the public that the NRC is reviewing the merits of the petition for rulemaking. The notice of receipt will include the docket number and explain how the public may track the status of the petition for rulemaking.

(d) *NRC communications with multiple petitioners.* If the petition is signed by multiple petitioners, any NRC obligation to inform a petitioner (as may be required under 10 CFR part 2, Subpart H) is satisfied, with respect to all petitioners, when the NRC transmits the required notification to the lead petitioner.

(e) through (f) [Reserved]

(g) *Public comment on a petition for rulemaking; Hearings.*

(1) At its discretion, the NRC may request public comment on a docketed petition for rulemaking.

(2) The NRC will post all comment submissions at <http://www.regulations.gov> and enter the comment submissions into ADAMS, without removing identifying or contact information from comment submissions. Anyone requesting or aggregating comments from other persons for submission to the NRC is responsible for informing those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submissions.

(3) No adjudicatory or legislative hearing under the procedures of 10 CFR part 2 will be held on a petition for rulemaking unless the Commission determines to do so, at its discretion.

(h) *Determination of a petition for rulemaking; closure of docket on a petition for rulemaking.*

(1) *Determination.* Following acceptance of a petition for rulemaking, the NRC's determination on the petition for rulemaking may be based upon, but is not limited to, the following considerations:

(i) The merits of the petition for rulemaking;

(ii) The immediacy of the safety, environmental, or security concern raised in the petition for rulemaking;

(iii) The availability of NRC resources and the priority of the issues raised in the petition for rulemaking in relation to other NRC rulemaking issues;

of the petition for rulemaking at any stage of the regulatory process. As applicable, the *Federal Register* notice will include a discussion of how the regulatory action addresses the issues raised by the petitioner, the NRC's grounds for denial of the petition for rulemaking, or information on the withdrawal request submitted by the petitioner. The notice will also include the NRC's response to any public comments received (if comments are requested), unless the NRC has indicated that it will not be providing formal written responses to each comment received.

(2) *NRC decision not to proceed with rulemaking after closure of a PRM docket.* If the NRC closes a PRM docket under paragraph (h)(2) of this section but subsequently decides not to carry out the planned rulemaking to publication of a final rule, then the NRC will notify the petitioner in writing of this decision and publish a notice in the *Federal Register* explaining the basis for its decision. The decision not to complete the rulemaking action will be documented as denial of the PRM in the docket file of the closed petition for rulemaking, in the Web sites, in the Unified Agenda, online in ADAMS and at <http://www.regulations.gov> as described in paragraph (jk) of this section.

(j) *Status of PRMs and rulemakings.*

(1) The NRC will document the most current information on active rulemakings at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/rulemaking-dockets/index.html> and the most current information on petitions for rulemaking at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html>.

(2) The NRC will include a summary of the NRC's planned and ongoing rulemakings in the Governmentwide *Unified Agenda of Federal Regulatory and Deregulatory Actions* (the Unified Agenda), published semiannually. This Unified Agenda is available at

<http://www.reginfo.gov/public/do/eAgendaMain/>.

(3) All docketed petitions, rulemakings, and public comments will be posted online in ADAMS and at <http://www.regulations.gov>.

4. In § 2.811, revise paragraph (e) to read as follows:

§ 2.811 Filing of standard design certification application; required copies.

* * * * *

(e) *Pre-application consultation.* A prospective applicant for a standard design certification may consult with NRC staff before filing an application by writing to the Director, Division of New Reactor Licensing, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, with respect to the subject matters listed in § 2.802(b)(1) of this chapter. A prospective petitioner also may telephone the Rules, Announcements, and Directives Branch, toll free on 800-368-5642, or send an e-mail to Rulemaking.Comments@nrc.gov on these subject matters. In addition, a prospective applicant may confer informally with NRC staff BEFORE filing an application for a standard design certification, and the limitations on consultation in § 2.802(b)(2) do not apply.

Dated at Rockville, Maryland, this _____ day of _____, 2013².

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-12-0160 – PROPOSED RULE: PETITION FOR
RULEMAKING PROCESS (RIN 3150-AI30);
EXPANDED AUTHORITY OF EXECUTIVE DIRECTOR
FOR OPERATIONS TO DENY PETITIONS FOR
RULEMAKING UNDER MANAGEMENT DIRECTIVE 6.3

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached X None _____

I approve staff recommendations 1, 2 and 3, subject to the attached edits.



SIGNATURE

2/6/13

DATE

Entered on "STARS" Yes ✓ No _____

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2

RIN 3150-AI30

[NRC-2009-0044]

Revisions to the Petition for Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to streamline its process for addressing petitions for rulemaking (PRMs). The proposed amendments are intended to improve transparency and make the PRM process more efficient and effective.

DATES: Submit comments by **[INSERT DATE 75 DAYS FROM DATE OF PUBLICATION]**.

Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

disposition a PRM or what constitutes "prompt" notice. ~~There is wide variation among Federal agencies on how PRMs are processed.~~

The NRC's requirements for rulemaking are set forth in 10 CFR part 2, "Agency Rules of Practice and Procedure," subpart H, "Rulemaking." In particular, 10 CFR 2.802, "Petition for rulemaking," and 2.803, "Determination of petition," establish the NRC framework for disposition of a petition for rulemaking concerning NRC regulations. The NRC's requirements for PRMs have remained substantially unchanged since their initial issuance in 1979, and the NRC's processes and procedures for PRMs historically have been established by and implemented through internal NRC policies and practices. To improve the PRM process, the NRC has reviewed both its regulatory framework associated with the PRM process and its internal policies, procedures, and practices.

A. NRC's Current PRM Process

Much of the NRC's PRM process historically has been established by and implemented through internal policies and practices. The proposed rule would codify NRC requirements currently included in its internal policies and practices regarding PRMs to increase transparency, ~~and provide greater clarity to the public.~~

In the current process, upon receipt of a PRM, the NRC acknowledges receipt to the petitioner and publishes a notice of receipt in the *Federal Register* to inform the public that the NRC has received the PRM. The NRC also notifies the petitioner in writing of the agency's action when it publishes a final rule or denial notice related to the PRM. The proposed rule would codify these actions to inform the public of NRC action upon receipt-acceptance of a PRM and denial of issues in a PRM. If the NRC determines that the petition has merit and should be considered in a rulemaking, the NRC's rulemaking process (including regulatory basis

accept a PRM for review if it does not include the information required under current § 2.802(c). The acceptance review process also would be modified to add two new criteria in § 2.803(b) and (c): Before accepting a PRM for docketing, the NRC would perform a screening review to ensure that the changes requested in the petition are within the legal authority of the NRC and that the PRM raises a potentially valid issue that warrants further detailed consideration by the NRC (e.g., confirm that the NRC's regulations do not already provide what the PRM is requesting and that the issue is not already under consideration by the Commission).

8. Information on the NRC's discretion to request public comment on a PRM, currently in § 2.802(e), and the NRC's discretion to hold a hearing on a PRM, currently discussed in § 2.803, would be moved to proposed § 2.803(g) ~~and amended for plain language.~~

9. The addition of specific criteria under proposed § 2.803(h) for the NRC's full review of a PRM would establish the considerations that the NRC may take into account when making a determination on the course of action to resolve a PRM. The NRC's process for disposition of a PRM historically has been contained in internal policy, and the NRC is proposing to place these considerations in the regulations to enhance the transparency of its PRM process. These proposed considerations for resolving a PRM are based on the NRC's last 30 years of experience in processing PRMs, insights from the NRC initiative to streamline its PRM process, and information from the NRC's review of other agencies' PRM regulations and practices. The proposed considerations would allow the NRC to examine the merits of the PRM, the immediacy of the concern, the availability of NRC resources, whether the NRC is already considering the issues in other NRC processes, the relative priority of the issues raised in the PRM, any public comments (if comments are requested), and the NRC's past decisions and current policy on the issues raised in the PRM.

10. The process for administrative closure of a PRM docket, once the NRC has determined

12. Section 2.803(i)(2) would explain that the NRC will notify the petitioner in writing and also publish a notice in the *Federal Register* if the NRC closes a PRM under § 2.802(h)(2)(ii) but subsequently decides not to carry out the planned rulemaking to publication of a final rule. These notices would explain the basis for the NRC's decision not to carry out the planned rulemaking to publication and not to include the PRM in a rulemaking action.

13. The addition of § 2.803(i) would explain how a PRM ultimately is resolved under the APA and would distinguish final resolution of a PRM from administrative closure of a PRM docket, described in proposed § 2.803(h)(2). Resolution of a PRM occurs when the NRC publishes a *Federal Register* notice informing the public that any planned regulatory action related to the PRM has been concluded. For rulemaking actions ~~(e.g., new, planned, or ongoing rulemakings related to the PRM)~~, resolution requires publication in the *Federal Register* of the final rule related to the PRM, which would include a discussion of how the published final rule addresses the issues raised in the PRM. Also, proposed § 2.803(i) would note that the NRC's denial of the PRM or the petitioner's withdrawal of the PRM at any stage of the regulatory process would conclude all planned regulatory action related to the PRM. As applicable, the *Federal Register* notice resolving the PRM would include a discussion of the NRC's grounds for denial or information on the withdrawal request that the petitioner submitted. The NRC is no longer publishing a semiannual summary of PRMs ~~before the NRC~~, so language in existing § 2.802(g) would be removed. Proposed new paragraphs § 2.803(j)(1) and (3) would explain that the public may view the status of rulemakings currently active with the Commission at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/rulemaking-dockets/index.html> and the most current information on PRMs at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html>. The new language would inform the public that it also may view the status of currently active rulemakings and PRMs at

electronic rulemaking portal. It would also specify that the NRC would publish a *Federal Register* notice that identifies the docket number of the PRM, informs the public that the NRC is reviewing the merits of the PRM, and explains how the public may track the status of the PRM online at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html> and track the status of rulemakings currently active with the NRC online at <http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/rulemaking-dockets/index.html>.

Proposed new paragraph (d) would notify the public that the NRC will send all communications to the lead petitioner identified in the petition, according to proposed new paragraph 2.802(c)(3), and that this communication would constitute notification to all petitioners. Thus, any NRC obligation to inform a petitioner is satisfied when the NRC sends the required notification to the lead petitioner. The heading, *NRC communications with multiple petitioners*, would be added to describe the subject of the paragraph.

Newly designated § 2.803(e) through (f) would be marked "Reserved."

Proposed new paragraph (g) would add the heading, *Public comment on a petition for rulemaking; Hearings*, to indicate the subject of the paragraph. Proposed new paragraph § 2.803(g)(1) would incorporate information from existing § 2.802(e) text pertaining to the NRC's discretion to request public comment on a docketed PRM and would amend the text for clarity and plain language. Information in existing § 2.802(e) that specifies how a PRM may be published for public comment in the *Federal Register* would be replaced by a concise statement specifying that the NRC, at its discretion, may solicit public comment on a docketed PRM.

When the NRC publishes an FRN requesting public comment on a PRM, the NRC's current practice is to include standard language in the FRN cautioning the public not to include identifying or contact information that they do not want to be publicly disclosed in their comment

submission. Proposed new § 2.803(g)(2) would include this caveat in the NRC's regulations to increase the likelihood that affected stakeholders will be aware of this practice.

Proposed new § 2.803(g)(3) would denote that no hearings will be held on a PRM unless the Commission determines to hold a hearing as a matter of discretion. This requirement currently exists in § 2.803, but it would be moved to new paragraph (g)(3) and amended for clarity and plain language. The text "the Commission deems it advisable" would be replaced with "the Commission determines to do so, at its discretion." This proposed amendment would clarify that the NRC has discretionary authority to hold a hearing on a docketed PRM.

Proposed new paragraph (h) would add the heading, *Determination of a petition for rulemaking; closure of docket on a petition for rulemaking* to indicate the subject of the paragraph. Existing regulations in § 2.803 require the NRC to resolve PRMs by either issuing a notice of proposed rulemaking or denying the petition. Proposed new paragraph (h)(1) of § 2.803 would codify a nonexclusive list of the methods and criteria that the NRC uses to determine a course of action for a PRM. Those methods and criteria include consideration of the issues raised in the PRM about its merits, the immediacy of an identified safety or security concern, the relative availability of resources, the relative issue priority compared to other NRC rulemaking activities, whether the NRC is already considering the issues in other NRC processes, the substance of public comments received, if requested, and the NRC's past decisions and current policy.

Proposed new paragraph (h)(1)(i) would establish that determination of a PRM may be based upon the merits of the PRM. For the purpose of this rule, the term "merits" would include the completeness and technical accuracy of the documents, logic associated with the petitioner's desired rule changes, and the appropriateness or worthiness of the desired changes compared to the current regulatory structure (i.e., existing regulations, associated regulatory

Proposed new paragraph (h)(1)(v) would provide that determination of a PRM may be based on the substance of any public comments received, if public comments are requested. Although the NRC might not request public comments on all PRMs, if public comments are requested, the NRC would consider the information commenters provided when determining a course of action for a PRM.

Proposed new paragraph (h)(1)(vi) would denote that determination of a PRM may be based on the NRC's past decisions and current policy related to the issues raised in the PRM. This paragraph would establish that the NRC could consider past Commission decisions (~~e.g., policy statements, staff requirements memoranda, adjudicatory board decisions~~) when determining a course of action for a PRM.

Proposed new paragraph (h)(2) would establish a process for administrative closure of a PRM docket once the NRC has determined its course of action for the PRM using the methodology and criteria in proposed paragraph (h)(1). Proposed paragraph (h)(2) with the heading, *PRM Docket Closure*, would establish that a PRM docket would be administratively closed when the NRC responds to the PRM by taking a regulatory action and publishing a document in the *Federal Register* that describes this action. Proposed new paragraphs (h)(2)(i) and (ii) provide two specific categories for administrative closure of a PRM docket. In proposed paragraph (h)(2), the NRC would administratively close a PRM docket by taking a regulatory action in response to the PRM that establishes a course of action for the PRM. The NRC would publish a notice in the *Federal Register* describing the determined regulatory action, including the related Docket Identification Number (Docket ID), as applicable. Proposed paragraph (h)(2)(i) would explain that the NRC may administratively close a PRM docket by deciding not to undertake a rulemaking to address the issues that the PRM raised, effectively denying the PRM, and notifying the petitioner in writing why the PRM was denied. Proposed paragraph (h)(2)(ii)

X. Regulatory Analysis

The NRC did not prepare a draft regulatory analysis for this proposed rule because it is considered a minor, nonsubstantive amendment ~~that has no economic impact on NRC licensees or the public~~ and does not meet the threshold economic and policy requirements of OMB Circular A-4 guidance for the preparation of regulatory analyses. The amendments will neither impose new safety requirements nor relax existing ones and therefore do not call for the sort of safety/cost analysis described in the NRC's regulatory analysis guidelines in NUREG/BR-0058, Revision 4, "Regulatory Analysis Guidelines of the US NRC," September 2004 (ADAMS Accession No. ML042820192).

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule would not, if issued, have a significant economic impact on a substantial number of small entities.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule does not apply to this proposed rule because these amendments are administrative in nature and do not involve any provisions that would impose backfitting as defined in 10 CFR chapter 1, or are inconsistent with any of the issue finality provisions in 10 CFR part 52.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: William D. Magwood, IV

SUBJECT: SECY-12-0160 – PROPOSED RULE: PETITION FOR RULEMAKING PROCESS (RIN 3150-AI30); EXPANDED AUTHORITY OF EXECUTIVE DIRECTOR FOR OPERATIONS TO DENY PETITIONS FOR RULEMAKING UNDER MANAGEMENT DIRECTIVE 6.3

Approved X Disapproved X Abstain _____

Not Participating _____

COMMENTS: Below X Attached ___ None ___

I approve, in large part, publication of the proposed rule on petitions for rulemaking (PRMs) in the *Federal Register*, subject to Commissioner Ostendorff's edits on page 5. I believe that the portions of the proposed rule that codify our current policies for PRMs will lead to an improved, clarified, and more transparent and effective process. However, I do not support the proposed expansion of the EDO's delegated authority to deny certain petitions for rulemaking. The staff has not sufficiently demonstrated that the current process results in an administrative burden so great that it justifies diminishing the Commission's authority.



SIGNATURE

16 January 2013

DATE

Entered on "STARS" Yes X No ___

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-12-0160 – PROPOSED RULE: PETITION FOR
RULEMAKING PROCESS (RIN 3150-AI30);
EXPANDED AUTHORITY OF EXECUTIVE DIRECTOR
FOR OPERATIONS TO DENY PETITIONS FOR
RULEMAKING UNDER MANAGEMENT DIRECTIVE 6.3

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

1/10/13

DATE

Entered on "STARS" Yes X No _____

**Commissioner Ostendorff's Comments on SECY-12-0160,
"Proposed Rule: Petition for Rulemaking Process (RIN 3150-AI30); Expanded Authority of
Executive Director for Operations to Deny Petitions for Rulemaking under Management
Directive 6.3"**

I approve, subject to the attached edits, publication of the proposed rule on petitions for rulemaking (PRMs) in the *Federal Register* and expansion of the delegation of authority to the Executive Director for Operations (EDO) to deny, in whole or in part, a PRM as explained in SECY-12-160. I appreciate staff's comprehensive and well-articulated SECY paper and *Federal Register* Notice. Improving, clarifying, and codifying our current policies for PRMs directly supports the NRC's Principles of Good Regulation.

The expanded delegation of authority to the EDO should assist the staff in more expeditiously dispositioning those PRMs that do not necessitate Commission involvement. The EDO should feel comfortable using this authority as appropriate. With this expansion, however, a more formal Commission notification process is appropriate. Therefore, the EDO should inform the Commission of any denials, in whole or in part, under this delegation of authority through a Commissioner's Assistant note five days prior to the issuance of the denial. Further, for Knowledge Management purposes, staff should make clear in the updated Management Directive 6.3 what types of situations would be covered by this delegation.

state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC's requirements, policies, and practices governing the PRM process have remained substantially unchanged since their initial issuance in 1979 (44 FR 61322; October 25, 1979). During the past 20 years, the NRC has received an average of nine PRMs per year and plans its budget and assigns resources based on this average. Recently, Hhowever, some years have ~~beginning in 2007 and continuing through 2012, the NRC has~~ experienced a dramatic increase in the number of PRMs submitted for consideration, docketing 25 PRMs in Fiscal Year (FY) 2011 alone. Those increases in PRMs ~~has~~ presented a significant resource challenge to the NRC.

In a memorandum to the other Commissioners entitled "Streamlining the NRR [Office of Nuclear Reactor Regulation] Rulemaking Process" (COMNJD-06-0004/COMEXM-06-0006) and dated April 7, 2006 (ADAMS Accession No. ML060970295), Chairman Nils J. Diaz and Commissioner Edward McGaffigan, Jr., proposed that, because of the general increase in rulemaking activities, the NRC staff should streamline its rulemaking process by removing unnecessary constraints, while simultaneously enhancing transparency of and public participation in the process. The memorandum also invited the development of additional mechanisms for "streamlining and increasing the transparency of the rulemaking process, thus allocating the appropriate level of resources for the most important rulemaking actions and ensuring that the staff's hands are not tied by perceived or real procedural prerequisites that are