

January 15, 2013

MEMORANDUM TO: Chairman Macfarlane
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff

FROM: R. W. Borchardt */RA/*
Executive Director for Operations

SUBJECT: BACKGROUND MATERIAL ON THE NON-ADJUDICATORY
TOPICS FOR THE JANUARY 31, 2013, COMMISSION MEETING
ON PUBLIC PARTICIPATION IN NRC REGULATORY
DECISION-MAKING

In preparation for the January 31, 2013, Commission meeting on Public Participation, the following background information may be helpful to the Commission and public:

Commission policy on public participation in NRC staff meetings

The NRC published its complete policy statement on meetings open to the public in the *Federal Register* on May 28, 2002 ([67 FR 36920-36924](#)).

Management Directive (MD) 3.5, "Attendance at NRC Staff-Sponsored Meetings," (available in the NRC's Agencywide Documents Access and Management System (ADAMS) under the Accession No. ML112971635) contains guidance to staff in implementing the policy statement. The MD was recently revised to clarify the NRC's policies with respect to closed meetings, specifically, to more clearly define what constitutes a meeting and to ensure certain closed staff meeting notices and summaries are both accessible by the public and issued in a timely manner. Revisions also address improvements in participation technologies and clarify sign-in sheet usage.

The NRC announces meetings that are open to the public on our [Public Meetings Schedule](#) webpage. The NRC also announces certain public meetings in the *Federal Register*. Members of the public who do not have access to the Internet can contact the NRC's [Public Document Room](#) staff for information on scheduled meetings.

Since March of 2002, the NRC has been recording and analyzing the information provided through the NRC Public Meeting Feedback Forms (NRC Form 659) received in response to the public meetings sponsored by both Headquarters and the Regions. The feedback form allows the public to comment on our meetings and request additional follow-up information.

An October 18, 2012, memorandum from Nader Mamish contains an analysis of fiscal year 2012 Public Meeting Feedback Forms (ML12285A408). This document contains an analysis and

summary of 408 feedback forms received from public meetings held from October 1, 2011, through September 30, 2012. We recently received approval from the Office of Management and Budget (OMB) to use an updated NRC Form 659, including renewing the OMB clearance for the form. We are also taking steps to make the form available electronically to the public, including using quick response codes to allow members of the public to access the form using a smartphone.

10 CFR 2.206 petitions for enforcement action

Any member of the public may raise potential health and safety issues in a petition to the NRC to take specific enforcement action regarding a licensed, operating facility. This provision is contained in §2.206, subpart B, of Title 10 of the *Code of Federal Regulations* (10 CFR) and a filing under this provision is often referred to as a “2.206 petition.” In general, the petition is submitted in writing to the Executive Director for Operations (EDO) and includes specific facts supporting the request for the NRC to take enforcement action. Unsupported assertions of safety problems or general opposition to nuclear power are not considered sufficient grounds for action.

After receiving a request, the NRC determines whether the request qualifies as a 2.206 petition. If it accepts the request for review as a 2.206 petition, the NRC sends an acknowledgment letter to the petitioner and a copy to the appropriate licensee and publishes a notice in the *Federal Register*. If warranted, the NRC could take action to modify, suspend, or revoke a license, or could take other appropriate enforcement action to resolve a problem identified by a 2.206 petition. During the petition process, the petitioner is informed of progress and is given copies of all relevant correspondence and is offered two opportunities to address the petition review board. The NRC also publishes a notice in the *Federal Register* when it publishes a Director’s Decision. A detailed of the process is in [NUREG/BR-0200](#), “Public Petition Process.”

The NRC communicates 2.206-related matters to members of the public through monthly status reports and director’s decisions. Examples are:

- November 2012, 2.206 Report on the Status of Public Petitions under Title 10 of the Code of Federal Regulations, Section 2.206 (ML12334A349 (memo), ML12334A351 (enclosure)).
- Final Director’s Decision provided to the New York Attorney General’s Office (ML12240A068 (cover letter), ML12240A077 (Directors Decision), ML12240A088 (notice)).

MD 8.11, “Review Process for 10 CFR 2.206 Petitions,” is currently under revision to provide an overall update to the MD, to clarify NRC staff roles and responsibilities, to streamline the criteria used for accepting a petition for review, and to incorporate, as appropriate, comments solicited from NRC staff and the public. Planned issuance of the revised MD is mid-2014.

Petition for rulemaking process

Any member of the public may petition the NRC to develop, change, or rescind one of its regulations. The detailed requirements for submitting a petition for rulemaking (PRM) are included in the NRC's regulations at 10 CFR 2.802, "Petition for Rulemaking." Section 2.802 describes the process for submitting petitions, the assistance that NRC staff may provide before a petition is filed, and the minimum content requirements of a petition. Further, §2.802 states that petitions that meet the minimum requirements are docketed and made available in ADAMS and on the Federal rulemaking portal, <http://www.regulations.gov>. Section 2.802 notes that the petitioner will be notified by the EDO if their petition does not meet the minimum content requirements and is incomplete.

The NRC's primary concern when reviewing PRMs is to ensure that NRC-licensed activities are conducted in a manner that ensures adequate protection of public health and safety, the environment, and the common defense and security. PRMs that raise valid safety concerns receive immediate NRC attention.

When the NRC decides that public comment will assist in determining a path forward regarding the petition, it will invite public comment and publish a notice in the *Federal Register* for a 75-day public comment period on the PRM. A copy of the PRM and any comments received will be made available in ADAMS and on <http://www.regulations.gov>. In addition, the petitioner is provided a copy of the notice and informed of any comments received on their petition.

The NRC staff will evaluate the PRM and any comments it received and will either consider the PRM in the NRC's rulemaking process or deny the PRM. If a PRM is denied, the NRC will publish a notice of denial in the *Federal Register*. This notice of denial will address any public comments received and the NRC's reason for denying the PRM.

A PRM that is considered in the rulemaking process could address issues that the NRC: 1) will immediately address as a prioritized health or safety concern, 2) is already addressing in an ongoing rulemaking, or 3) is evaluating in plans for future rulemakings. In the instances that the NRC addresses the PRM through the rulemaking process, the NRC will publish a document in the proposed rule section of the *Federal Register* explaining its intent. This *Federal Register* document will also provide instructions so the public can stay informed regarding future NRC action that addresses the issues raised in the petition for rulemaking. An NRC Docket ID identifying the project will also be published in the *Federal Register* at that time. This Docket ID could be the petition Docket ID or the rulemaking Docket ID, if available.

As a result of the rulemaking process, if the NRC publishes any proposed or final rule in the *Federal Register* that considers the issues raised by a PRM, it will specifically address the PRM in the supplementary information portion of the document. It is possible that the petitioner's concerns may not be addressed exactly as requested in the PRM.

From 2007 to 2012, the NRC received 68 PRMs of which 21 were denied and 17 were either fully considered or partially considered in the rulemaking process; the remaining 30 petitions are under staff review.

On November 30, 2012, I approved a notation paper entitled, SECY-12-0160, "Proposed Rule: Petition for Rulemaking Process (RIN 3150-A130)" (ML120440531). This SECY paper and draft proposed rule were submitted to the Commission on December 3, 2012, and both documents were made publicly available on December 14, 2012. Upon Commission approval the proposed rule will be issued for a 75-day public comment period.

The proposed rule would amend the NRC's regulations to streamline its process for addressing a PRM. Much of the agency's petition for rulemaking process has been established by and implemented through internal policies and practices. The proposed rule would codify the NRC's policies and practices to provide greater transparency of the NRC's PRM process. More specifically, the proposed rule would clarify and codify the NRC's actions upon receipt of a petition and at other stages of the PRM process. For petitioners, codifying the NRC's policies and practices would provide greater transparency of the PRM process and insight into what they can expect during the NRC's acceptance review and evaluation of the petition.

NRC Interactions with States and Tribes

Section 274 of the [Atomic Energy Act of 1954](#), as amended, provides a statutory basis under which the NRC relinquishes to the States portions of its regulatory authority to license and regulate byproduct materials (radioisotopes), source materials (uranium and thorium), and certain quantities of special nuclear materials. The mechanism for the transfer of the NRC's authority to a State is an agreement signed by the Governor of the State and the Chairman of the Commission, in accordance with Section 274b of the Act.

As part of the Agreement State Program, the NRC conducts training courses and workshops, evaluates technical licensing and inspection issues from Agreement States, evaluates State rule changes, participates in activities conducted by the Conference of Radiation Control Program Directors, Inc., and provides early and substantive involvement of the States in the NRC rulemaking and other regulatory efforts. The Agreement States and the NRC are involved with a [number of working groups](#) regarding the development of regulations. The NRC also coordinates with Agreement States the reporting of event information and responses to allegations reported to the NRC involving Agreement States. Thirty-seven States have entered into Agreements with the NRC, and others are being evaluated.

A number of NRC MD's provide guidance to staff on our interactions with the States, including: MD 5.2, "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities," MD 5.3, "Agreement State Participation in Working Groups," MD 5.6, "Integrated Materials Performance Evaluation Program (IMPEP); MD 5.7, "Technical Assistance to Agreement States," MD 5.8, "Proposed Section 274b Agreements with States," and MD 5.9, "Adequacy and Compatibility of Agreement State Programs."

A PRM was recently filed by the Organization of Agreement States (OAS) and the State of Florida on the compatibility requirements on general licensing requirements in 10 CFR 31.5 and 31.6. The Notice of Receipt for the petition (PRM-31-05) can be found in ADAMS (ML053460483). The results of the OAS petition for rulemaking (PRM 31-05) and request from the State of Florida on the general license regulations and continued review of implementation under IMPEP can be found in [FSME Letter 07-087](#). The petition was handled and partially granted as part of the

rulemaking in [SECY 10-0105, "Final Rule: Limiting the Quantity of Byproduct Material in a Generally Licensed Device \(RIN 3150-A133\)."](#) The [second item of SRM-SECY-10-0105](#) approves the petition. The final determination of the petition can be found in a *Federal Register* (ML120370521).

Additionally, a Resolution of a Petition for Rulemaking Submitted by the State of Colorado and the OAS can be found in ADAMS under ML092010087.

The NRC is committed to implementing programs that acknowledge the sovereign rights of Federally-recognized Native American Tribal governments. The NRC maintains government-to-government communications with those Tribes who are potentially affected by, or otherwise interested in, NRC regulatory activities. Tribal interest in nuclear-related activities provides for case-by-case exchanges of information on specific issues related to the NRC's policy and regulatory authority, primarily in the areas of high and low-level radioactive waste storage, transportation, disposal, and reclamation. The NRC also maintains a cooperative relationship with the National Congress of American Indians, a National Tribal Organization, and cognizance of their related activities.

The NRC is currently seeking comments on draft agency procedures for consulting with Native American Tribes. The draft [Tribal Protocol Manual](#) provides guidance on effective interaction between NRC staff and Tribal governments, along with background on the historic relationship between the Federal government and Native Americans. To aid in the development of an agency-wide policy statement, the NRC is seeking comments from Tribal governments and organizations, the public, and other interested parties. The comment period closes on April 1, 2013.

cc: OGC
SECY