



NUCLEAR ENERGY INSTITUTE

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Vice President, General Counsel
and Secretary

February 8, 2018

COMMISSION BRIEFING 10 CFR 2.206 PROCESS

SECTION 2.206 PROCESS

Approach to Evaluation

- Does the structure of the implementing process serve the regulation's intended purpose?
 - Is there easy access/ease of use?
 - Are there appropriate limits/boundaries?
 - Are there reasonable threshold/screening and review criteria?
 - Is process for decision making rational?
 - Does data demonstrate effectiveness?
 - Do petitions receive appropriate NRC review and oversight?

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Ease of Access and Use

- The 2.206 process is available and easily used
 - No standing or format requirements
 - No requirement to mention 2.206
 - Staff may even interpret petitions that do not request enforcement action as 2.206 petition
- Reasonably requires factual basis for petition and relief sought
 - Commission or ASLB referrals screen in

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Appropriately Limited

- Intended use as enforcement tool is clear
 - Not intended to substitute for rulemaking or adjudications, allegations, OI or OIG process
 - Not intended to initiate NRC review if issues have been reviewed and addressed through other processes
 - Not intended to address general concerns
 - Not available if issue is not within NRC jurisdiction
 - Restrictions for security and SUNSI information

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Reasonable Screening Criteria/Review

- Management Directive 8.11 specifies rational criteria for PRB to determine whether to accept and proceed further with a 2.206 petition
- Factors include:
 - Need for immediate action, licensee response, possible consolidation, referral to Allegation Program or OIG; adds meetings for “complex” petitions
- Once accepted, process may involve review by and coordination among multiple NRC offices
 - NRR, NRO, NMSS, OE, OGC, OI, OIG may be involved as needed

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Rational Decision-making

- Assignment of petition manager to shepherd petition through process
- PRB comprised of SES chair, SMEs, and if necessary, OGC, OI, OIG
- PRB reviews initial staff screening; offers petitioner meeting or teleconference
- Director's Decision to include: description of issues; their safety significance; and basis for disposition
 - Streamlined and partial decisions available options

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Notice and Opportunity to Participate

- Petition manager updates petitioner of status at least every 60 days by phone or email
- After PRB initial assessment, petition manager notifies petitioner whether petition meets 2.206 acceptance criteria and offers opportunity to clarify or supplement petition via a transcribed teleconference or a public meeting with PRB
 - Petitioner may request a reasonable number of others to assist in addressing PRB
 - Staff and license can ask clarifying questions

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Schedule

- Schedule goals in MD 8.11 include:
 - Issue acknowledgement/closure letter within 90 days of the OEDO assignment of the petition
 - Issue proposed Director's Decision for comment within 120 days after acknowledgement letter, or less for uncomplicated petitions
 - Issue final Director's Decision within 45 days of the end of the comment period
- OEDO tracks schedule adherence and may extend schedule

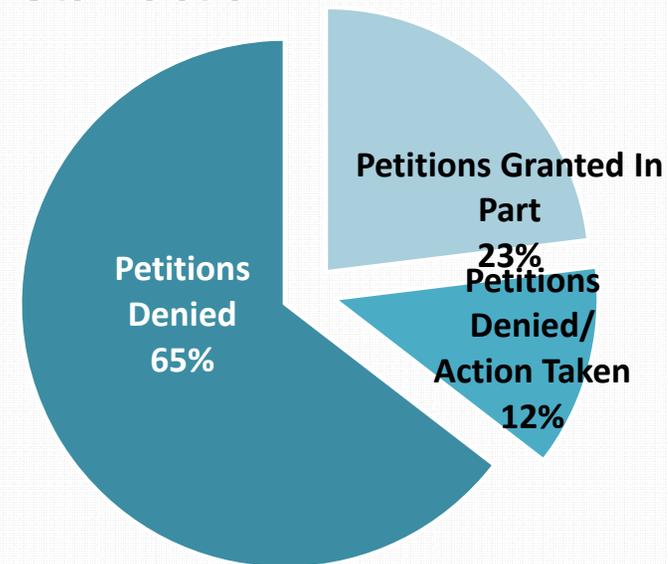
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Effectiveness

- Widely-used, but often duplicates NRC Staff actions already underway
 - 35% of petitions lead to new NRC Staff action

Petition Outcomes	Number
Granted, At Least In Part	95
Denied / Action Taken ¹	51
Denied	266
Total (since 1975)	412

¹ “Denied/Action Taken” means that the NRC Staff took some action that addressed or resolved the subject of the petition.



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Effectiveness

- NRC action taken in 35% of 2.206 petitions filed
 - 23% granted at least in part; additional 12% denied but NRC action taken
 - NRC is not required to take requested action
- Concerns in 2.206 petitions often reflect concerns detected and addressed by other NRC processes
- Failure to issue most extreme relief (i.e., order) is not a reasonable measure of effectiveness
- NRC should not be largely reliant on citizens to oversee safety

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MD 8.11 Update

- Agency should:
 - continue to improve effectiveness, efficiency, clarity, and timeliness of 2.206 process
 - conduct periodic reviews and analysis
 - focus on quality of decision-making; ensure bases for decisions are well documented
- 2017 revisions to MD 8.11 are useful:
 - Improved initial screening process and Petition Review Board evaluation criteria
 - Clarified review criteria, NRC Staff roles and responsibilities

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Additional Recommendations

- A redlined version would be helpful to facilitate a close evaluation of proposed revisions
- Consider retaining MD 8.11 as a single document to avoid potential confusion/inconsistencies etc.
- Clarify MD 8.11 section III.D.3(c) regarding holding a petition in abeyance
- Clarify timing for petition manager to notify petitioner of results of PRB initial assessment



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