
RULEMAKING ISSUE

(Affirmation)

November 14, 2014

SECY-14-0127

FOR: The Commissioners

FROM: Mark A. Satorius
Executive Director for Operations

SUBJECT: FINAL RULE: PETITION FOR RULEMAKING PROCESS,
TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS* PART 2
(RIN 3150-AI30)

PURPOSE:

To request Commission approval to publish a final rule in the *Federal Register* that will amend Part 2 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Agency Rules of Practice and Procedures." The final rule will streamline the U.S. Nuclear Regulatory Commission's (NRC) regulations in 10 CFR Part 2, Subpart H, "Rulemaking," for addressing a petition for rulemaking (PRM).

SUMMARY:

The final rule does the following: (1) clarifies the NRC's current policies on and practices of the actions taken on receipt of a PRM and at other stages of the PRM process; (2) clarifies the current policies and practices for evaluating PRMs and for communicating (to the petitioner and the public) information on the status of NRC PRMs and rulemaking activities addressing PRMs; and (3) establishes an improved process for resolving PRMs, including an administrative process for closing the PRM docket to reflect agency action for the PRM. The NRC intends for the amendments to enhance the consistency, timeliness, and transparency of the agency's actions and to increase the efficient use of agency resources in the PRM process.

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BACKGROUND:

Subpart H to 10 CFR Part 2, sets forth the NRC's requirements for rulemaking. In particular, 10 CFR 2.802, "Petition for rulemaking," and 10 CFR 2.803, "Determination of petition," establish the NRC's current framework for PRMs. The NRC's requirements for PRMs have remained largely unchanged since their initial promulgation in 1979. The NRC's internal processes and procedures for dispositioning PRMs historically have been established by and implemented through internal NRC policies and practices.

In SECY-12-0160, "Proposed Rule: Petition for Rulemaking Process (RIN 3150-AI30); Expanded Authority of EDO [Executive Director for Operations] to Deny Petitions for Rulemaking under Management Directive 6.3," dated November 30, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML120450013), the NRC staff provided the Commission with a proposed rule to amend 10 CFR 2.802 (ADAMS Accession No. ML13107B459). The Commission approved the proposed rule in a staff requirements memorandum (SRM) dated March 22, 2013 (ADAMS Accession No. ML13081A078). The NRC published the proposed rule for a 75-day comment period in the *Federal Register* on May 3, 2013 (78 FR 25886). The public comment period for the proposed rule closed on July 17, 2013, and seven comments were received. Commenters included members of the public, nongovernmental organizations, and the nuclear industry.

DISCUSSION:

The primary objectives of this final rule are 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. This final rule does the following: (1) clarifies the NRC's current policies and practices that govern NRC's actions when a PRM is received; (2) clarifies and improves the current policies and practices for evaluating PRMs and for communicating (to the petitioner and the public) information on the status of PRMs and rulemaking activities addressing PRMs; and (3) improves the process for resolving PRMs, including establishing an administrative process for closing the PRM docket to reflect agency action for the PRM. The final rule includes the following changes, clarifications, and enhancements:

- Paragraph 2.802(a) reflects updates in the NRC's internal system for receiving electronic submissions of PRMs.
- Paragraph 2.802(b) allows petitioners to consult directly with the NRC staff before and after filing a PRM with the NRC. The amendments also clarify what consultation assistance the NRC may provide.
- Paragraph 2.802(c) clarifies the information that a petitioner must include in a PRM.
- Paragraph 2.802(d) is reserved and re-designated as § 2.802(e).
- Paragraph 2.802(e) clarifies that a suspension request is for an "adjudication involving licensing" (the proposed rule's provisions on suspensions are not included in the final rule).

- Paragraph 2.802(f) informs petitioners where to submit a request to amend or withdraw their PRMs and what information to include in their request.
- Paragraph 2.803(b) clearly states that the NRC will not accept a PRM for review if it does not include the information required by § 2.802(c).
- Paragraph 2.803(g) clarifies the NRC's discretion to request public comment on a PRM.
- Paragraph 2.803(h) lists the considerations that the NRC may take into account when determining the course of action to resolve a PRM.
- Paragraph 2.803(h)(2) describes the process for administrative closure of a PRM docket.
- Paragraph 2.803(h)(2)(ii) explains that there are three common 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.
- Paragraph 2.803(i)(2) explains 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.
- Paragraph 2.803(i) explains how a PRM is ultimately resolved, and will distinguish final resolution of a PRM from administrative closure of a PRM docket.
- Administrative changes are made throughout Subpart H, including conforming amendments to § 2.811.

Overview of Public Comments

The NRC received seven comments on the proposed rule from members of the public, nongovernmental organizations, and the nuclear industry. One comment was received after the 75-day comment period closed, and the NRC addressed this late-filed comment as part of this final rule. The majority of the comments were in favor of the overall goals of the proposed amendments to the PRM process. However, three comments received from the nuclear industry (specifically, from the Nuclear Energy Institute (NEI), AREVA NP Inc. ("AREVA"), and STARS Alliance LLC ("STARS")), expressed opposition to the proposed amendments in § 2.802(b) and (e) and § 2.803(h) and (i). One comment from the Executive Board of the Organization of Agreement States (OAS) recommended making more information publicly available regarding PRM activities. In addition, the NRC determined that two comments from members of the public were out of scope because they did not address the merits of the proposed rule.

The comments and associated NRC responses are discussed in Section III, "Public Comment Analysis," of the final rule (enclosed). However, comments that resulted in changes to the proposed rule are discussed below.

The industry commenters oppose the NRC's proposed changes to the provisions on requests for suspension of adjudicatory proceedings for licensing (i.e., licensing hearings) because they believe they would effectively allow and encourage rulemaking petitioners to participate in adjudicatory hearings without first meeting the agency's standing and contention admissibility standards applicable to those proceedings. The NRC staff did not intend the proposed rule to have the consequences described by these commenters. In response to these comments, the staff concluded that there are a number of additional factors that the NRC must consider with respect to requests for suspension of adjudicatory proceedings based on PRMs. Accordingly, the staff proposes to retain, in unchanged form, the suspension language formerly located in paragraph (d) and now re-designated as paragraph (e) of § 2.803 in this final rule. However, in response to public comments, the staff has included a new title for this paragraph (the former paragraph (d) did not contain a title) indicating that the suspension is with respect to an "adjudication involving licensing." Neither the addition of the title to this paragraph nor its re-designation from paragraph (d) to (e) is intended to suggest any change in the applicable NRC law governing suspensions or the application of this provision to individual suspension requests in PRMs.

The NEI's, AREVA's, and STARS' comments stated that the NRC should not adopt the proposed amendments to § 2.803(h) and (i) because the "two-part process for reaching final determinations is overly complex" and "will confuse, rather than clarify, the agency's procedure for resolving PRMs." Staff has included a more thorough explanation of these concepts in the statement of considerations for the final rule. In addition, the staff has developed a diagram that illustrates the PRM process and the rule terminology that apply to each stage and action of the PRM process (ADAMS Accession No. ML14259A474). This diagram will be included in the statement of considerations of the final rule.

The OAS Executive Board comment stated that the NRC should publish a list of PRM activities and make this list available in an easily identifiable location on the NRC's Web site. The OAS Executive Board further stated that the locations identified in proposed § 2.803(j) (1) and (3) are hard to find on the NRC's Web site and "may cause confusion to the public." The NRC staff agrees with the recommendation to include a list of PRM activities in an easily identifiable location on the NRC's Web site. Staff has added a direct link to rulemaking documents from the highest-level public NRC Web page. In addition, the NRC staff developed a new Web page that lists all "open" PRMs to supplement the current Petition for Rulemaking Dockets Web pages.

COMMITMENTS:

If the final rule is approved, the staff will do the following:

1. Update office procedures, including Management Directive 6.3, "The Rulemaking Process," to reflect the rule changes.
2. Publish a notice of withdrawal of Regulatory Guide (RG) 10.12, "Preparation of Petitions for Rulemaking under 10 CFR 2.802 and Preparation and Submission of Proposals for Regulatory Guidance Documents" (ADAMS Accession No. ML003739395), in the *Federal Register*.
3. Make conforming changes to the NRC's internal and external Web sites.

4. Develop informational tools to aid the public in understanding and utilizing the PRM process.

RECOMMENDATIONS:

The NRC staff recommends that the Commission:

1. Approve the final rule for publication in the *Federal Register* (Enclosure 1).
2. Certify that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities to satisfy the requirement of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This certification is included in the enclosed *Federal Register* notice.
3. Note:
 - a. As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC staff will inform the Chief Counsel for Advocacy of the Small Business Administration of the certification and the reasons for it.
 - b. The NRC staff has determined that this action is not a major rule as defined in the Congressional Review Act of 1996 (5 U.S.C. 804(2)), and has confirmed this determination with the Office of Management and Budget.
 - c. The NRC staff will inform the appropriate congressional committees of this action.
 - d. The Office of Public Affairs will issue a press release when the NRC files the final rule with the Office of the Federal Register.

RESOURCES:

The resources for this rulemaking are provided by the Corporate Support Services and Rulemaking Support business lines. The NRC will fund the withdrawal of RG 10.12, and revisions to the internal and external Web sites will be conducted using resources under the Office of Administration's Corporate Support Services business line.

The Commissioners

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COORDINATION:

The Office of the General Counsel has no legal objection to the final rule. The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objection.

/RA Darren Ash Acting for/

Mark A. Satorius
Executive Director
for Operations

Enclosure:
Federal Register Notice

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Enclosure:
Federal Register Notice

ADAMS Accession No.: ML13256A024

WITS201300129

***via e-mail**

Office	ADM/DAS/RADB	ADM/DAS/RADB	ADM/DAS/RADB	QTE Resource*	NMSS*
Name	JBorges	LTerry (TBarczy for)	CBladey (JShepherd for)	CHsu	CHaney (CRoman for)
Date	9/16/14	9/16/14	9/16/14	9/23/14	9/26/14
Office	NRR*	NRO*	FSME*	OIS*	NSIR*
Name	DDorman (RBell for)	GTracy (GTartal)	BHolian (JDanna for)	JFlanagan	JWiggins (BMcDermott for)
Date	9/29/14	9/25/14	9/23/14	09/17/14	9/26/14
Office	OCFO	RES	OGC	DAS	DAS
Name	MWylie (AHoward for)*	BSheron (BRini for)*	BJones	DMeyer	SSchoenmann
Date	9/29/14	9/29/14	10/10/14	10/23/14	10/23/14
Office	ADM	ADM	OEDO	EDO	
Name	CCarpenter	SStewart-Clark (CCarpenter for)	DAsh	MASatorius (Dash for)	
Date	11/03/14	11/03/14	11 /14 /14	11 /14 /14	

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