

Category 3 Public Meeting on Management Directive (MD) 8.11 “Review Process for 10 CFR 2.206 Petitions”

December 7, 2017

Meeting Objectives and Format

- Objectives:
 - Stakeholder understanding of NRC's efforts to update and improve Management Directive (MD) 8.11 "Review Process for 10 CFR 2.206 Petitions"
 - Obtain feedback on revisions and improvements to the 2.206 petition process
- Format:
 - Identify the significant revisions to the guidance
 - Provide the basis for the revisions
 - Actively engage on the changes and obtain stakeholder feedback

Overview of MD 8.11 Revision

Objectives of the MD 8.11 Revision:

- Update guidance on the 2.206 petition process
- Conduct the 2.206 petition process in an open and transparent manner
- Facilitate resolution of safety/security issues raised in 2.206 petitions
- Improve the efficiency and timeliness of the 2.206 process
- Streamline the MD to enhance clarity

Overview of MD 8.11 Revision

Increase Clarity:

- Increase petitioners' and NRC staff understanding to provide more consistent implementation
- Increase understanding of the purpose and application of the criteria
- Clarify processes that have been implemented in an inconsistent manner
- Better align the guidance with the flow of the petition process
- Focus on outcome-based guidance and requirements and relocate detailed step-by-step instructions

Overview of MD 8.11 Revision

Increase Effectiveness and Efficiency:

- Result in more timely feedback, and more timely transition to another process
- Allow greater focus on petitions that identify significant safety or compliance issues
- Provide more meaningful engagement between the Petition Review Board (PRB) and the petitioner

Ensure Openness and Transparency:

- Result in more meaningful public participation in the process
- Provide a more predictable process

Initial Screening

(Overview)

- Current guidance is not structured to support effective screening
- Process requires PRB review even when a request clearly does or does not meet the criteria
- Existing criteria have been clarified to allow initial screening
- Screening would occur earlier in the process
- Clear screening criteria can result in more timely feedback

Initial Screening (Overview)

- Screening criteria are moved to Section II, “Initial Staff Actions”
- Staff perform the screening before a PRB is engaged
- Screening Criteria:
 - Referrals from the Commission or a Presiding Officer
 - General assertions and duplicative requests for action under 10 CFR 2.206
 - Allegations of wrongdoing
 - Requests for non-public process or identity protection
 - No request for action in accordance with 10 CFR 2.202
 - Requests to impose a requirement that is outside NRC jurisdiction
 - Requests for rulemaking
 - Issue(s) under review in an adjudicatory proceeding
- Staff may still consider an issue that is screened out for immediate action and/or inclusion in the 2.206 process.

Screening Criteria

Referrals by the Commission or a Presiding Officer

Section II.A.2. (a)

“An issue that is referred to the NRC staff for consideration under the 2.206 process by the Commission or a presiding officer in an adjudicatory proceeding will be entered in the 10 CFR 2.206 process as described in Section II.A.2(e) of this handbook.”

- The Commission or Presiding Officer in an adjudicatory proceeding refers a request that:
 - meets the minimum criteria for consideration as a 2.206 petition, and
 - is not appropriate to review through the proceeding in which it was received
- The request will be screened in and assigned to a PRB for consideration against the petition evaluation criteria in Section III.C.
- No other screening criteria are considered

Screening Criteria

General assertions and duplicative requests for action

Section II.A.2. (c)(i)

“The petition is simply (1) a general statement of opposition to licensed activities, nuclear facilities or materials or (2) a general assertion without supporting facts.”

- Examples include conclusory statements without support (e.g., that the quality assurance at a facility is inadequate), letters submitted to the NRC as a result of mass mailing campaigns, or letters of support for a 10 CFR 2.206 petition that is already under NRC consideration.
- The draft guidance consolidates and clarifies guidance to ensure consistency with current practice and policy
- Moved to initial actions because such requests clearly do not meet 2.206, which says that “the request must set forth the facts that constitute the basis for the request.”

Screening Criteria

Allegations of Wrongdoing

Section II.A.2 (c)(ii)

- If the petition alleges wrongdoing:
 - Handled consistent with applicable allegation program guidance
 - Petition manager informs petitioner that the issue will be handled as an allegation, and discuss identity protection
 - The portions that are an allegation are not publically released
- The draft guidance consolidates and clarifies guidance to ensure consistency with current practice and policy
- Moved to initial actions to enable allegations to be quickly screened and transferred to the applicable NRC process
- Revisions clarify internal staff coordination actions, and do not impact which requests are transferred to the allegation process

Screening Criteria

Requests for non-public process or identity protection

Section II.A.2. (c)(iii)

- Petitioner requests that the petition remain non-public, and/or requests identity protection as part of the process
 - Staff should explain to the petitioner that the 2.206 process is a public process and, therefore, the petition and petitioner's identity must remain public
 - Petitioner who does not agree should be informed that the petition will be removed from the 2.206 process and told how it will be handled (e.g., as an allegation)
- The draft guidance consolidates and clarifies guidance to ensure consistency with current practice and policy
- Moved to initial actions because the 2.206 process involves making the petition public.

Screening Criteria

No Request for Action that can be taken Under 10 CFR 2.202

Section II.A.2. (c)(iv)

“The petition does not seek an enforcement-related action that would involve initiating a proceeding in accordance with 10 CFR 2.202, “Orders”... (e.g., a proceeding to modify, suspend, or revoke a license or take such other action as may be proper by serving an order on the licensee or other person subject to the jurisdiction of the Commission. “

- Includes a screening criterion to address petitions that do not include an explicit or implicit request for NRC to take an action under 10 CFR 2.202
- Request must fundamentally involve NRC taking an action that can be implemented under 2.202
- Requests will be reviewed to determine if they contain an explicit or implicit request for NRC action that can be taken under 2.202

Screening Criteria

Requests that are Outside NRC Jurisdiction

Section II.A.2. (c)(v)

“Requests to impose a requirement that is outside the jurisdiction of the Commission (e.g., a state or local ordinance or a requirement of another federal agency) will not be considered under the 2.206 process, but may be referred to the appropriate regulatory authority.”

- New screening criterion
- Screens out petitions that request an action that is not within NRC’s authority
- Requests may be referred to the appropriate entity having jurisdiction
- Examples include actions for which another Federal or State agency has authority such as FAA or an Agreement State

Screening Criteria

Requests for Rulemaking

Section II.A.2. (c)(vi)

- Petition alleges deficiencies in existing NRC rules, and/or requests changes to existing NRC rules
- Staff will consult with the appropriate rulemaking branch
- Rulemaking branch's input incorporated into the NRC's response to the petitioner.
- Draft guidance relocates current guidance to screening section to ensure quick treatment in the proper process.

Screening Criteria

Issues Under Review in an Adjudicatory Proceeding

Section II.A.2. (c)(vii)

“If the issue(s) raised in a petition (or portions thereof) are the subject of a proffered or admitted contention in an ongoing adjudicatory proceeding regarding the same licensee and facility, those issues generally will not be considered in the 2.206 process (regardless of whether the 2.206 petitioner proffered the contention or is a party to the proceeding).”

- Clarification of existing guidance
- Clarifies when a petitioner's concerns could be addressed through an adjudicatory proceeding
- Moved to initial actions to ensure the determination is made promptly

Petition Review Board Evaluation

Sections III.C. and D.

- Initial PRB Assessment
 - May reevaluate screening criteria, if unclear
 - Determines if immediate actions are needed
 - Other actions discussed more under PRB Meetings
- Criteria for Accepting Petitions Under 10 CFR 2.206
- Criteria for Consolidating Petitions
- Criteria for Holding a Petition in Abeyance
- Issue a Streamlined Director's Decision

PRB Criteria for Accepting Petitions

Section III.C.1.

- Clarifies criteria in existing guidance
- Does the request meet the requirements in 10 CFR 2.206
 - Does the Petition Provide Facts that Constitute the Bases for Taking the Requested Action, and
 - Are the Facts Sufficient to Warrant Further Inquiry
- Does the request meet the following criteria:
 - Petition raises issues that have not previously been the subject of a facility-specific or generic NRC staff review, or
 - If the issues were previously reviewed, must meet one of the following:
 - The prior review did not resolve the issues raised by the petitioner
 - The resolution of the issues in the prior review does not apply to the facts provided by the petitioner to support the requested action
 - The petition provides significant new information that the staff did not consider in the prior review
 - Special Circumstances

Other PRB Considerations

After Accepting A Petition For Review

Sections III.C.2. and 3.

- Consolidating Petitions – Guidance Clarified
- Holding a Petition in Abeyance - New Guidance
 - Issues raised in the petition are the subject of ongoing or imminent review
 - The review is not expected to be completed in the near future
 - PRB needs results to reach an informed decision on the petition.
 - Status updates every 120 days vs 60 days
 - Petitions would not be held in abeyance merely to allow a petitioner to develop additional supporting information not provided with the original petition
 - PRB will proceed with available information

PRB Meetings

Existing Process

- Current sequence of PRB meetings does not result in timely and effective actions to address 2.206 petitions
 - Initial meeting with petitioner occurs before the PRB has met to discuss the petition
 - Intended to ensure the PRB has a complete understanding of the petition
 - Has not resulted in meaningful interaction between the petitioner and the PRB
 - Precludes the PRB from providing feedback to petitioner to support more constructive dialogue at the meeting
 - Has not always resulted in increasing PRB's understanding
 - Meaningful interactions primarily have occurred after PRB reviews the petition and makes its initial recommendation
 - Post-review meeting is typically not required if PRB accepts the petition

PRB Meetings

Proposed Sequence

Section III.D.

- PRB will hold an internal meeting to:
 - Develop an initial assessment of whether the petition, as submitted, meets the evaluation criteria
 - Identify information needed to fully evaluate, or questions on the petition
- Provide feedback to petitioner on results of initial assessment
 - Enables petitioner to be better prepared to respond to any PRB questions
- Offer petitioner a meeting with the PRB
 - Opportunity to provide additional or clarifying information on the petition
 - Can ensure presentation addresses areas identified by the RPB
- PRB would not make a recommendation to Office Director on whether to accept or reject the petition
- Enables PRB to more actively and constructively engage with the petitioner
- PRB would make initial recommendation after the

PRB Meetings

Proposed Sequence (Cont'd)

Section III.D.

- PRB will hold an internal meeting after meeting with petitioner to:
 - Review the petition, as supplemented by the petitioner, against the evaluation criteria
 - Determine if any additional information is needed from petitioner
 - Develop recommendation for the Office Director on whether to accept or reject the petition
- PRB chairperson briefs Office Director and seeks approval of recommendation
- Approach provides petitioner the opportunity to ensure PRB has all relevant information
 - Can address the potential that the petition does not meet the evaluation criteria through open engagement with the PRB
 - Prevents a situation where the petitioner must “prove” the PRB’s initial recommendation is wrong
- PRB can request an additional meeting if it does not fully understand the petition or needs additional information to make a recommendation

Streamlined Director's Decision

Section III.G.2. (c)

"If the petition ... does not raise any new safety or security issues that have not been addressed by the staff, the staff may be prepared to respond to the merits of the petition immediately. In these cases, a proposed director's decision would not be issued, and the acknowledgement letter would be accompanied by the final director's decision."

- Clarifies existing guidance
- Supporting information is already known to the NRC
 - NRC-generated information from inspection reports and generic letters
 - Information well-known to the NRC, such as news reports or licensee event reports
- Issues have been previously reviewed in another NRC process and resolved, but resolution not yet issued
- Joint Acknowledgement Letter and Directors Decision issued that explain the resolution of the issue
- Ensures time sensitive actions issued without delay, and a timely response to the petitioner's concerns
- If still under review, the petition could instead be held in abeyance

Schedule

Section IV.B.

- Revised to reflect experience with petitions completed under the existing guidance
- Issue acknowledgement or closure letter within 90 days of being assigned the petition
 - Has required longer times when an additional meeting is held
- Issue proposed director's decision for comment within 120 days after issuing the acknowledgment letter.
 - A proposed director's decision for uncomplicated petitions should be issued in less than 120 days
- Issue the director's decision within 45 days of the end of the comment period for the proposed director's decision
 - The actual schedule should be shorter if the number and complexity of the comments allow

Streamlined Guidance

- Removed procedural detail that is not appropriate for, nor practical to have in, an MD while maintaining the important process elements:
 - Improve clarity, readability, understandability of the MD
 - Enable changes to the administrative portions of the petition process without having to implement the MD revision process
- Additional detail would be relocated in staff maintained document (e.g., desk guide) that would be publically available
 - Detailed information to be relocated includes day-to-day instructions for staff, including examples and lessons learned that could be more easily maintained and updated when needed.
 - Would not remove the requirement to reassess and periodically update the MD on the required schedule
- Information necessary for stakeholders to understand the petition process would not be removed

QUESTIONS