

Nuclear Regulatory Commission

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issues which that party placed in controversy or sought to place in controversy in the proceeding.

§ 2.713 Initial decision and its effect.

(a) After hearing, the presiding officer will render an initial decision which will constitute the final action of the Commission forty (40) days after its date unless any party petitions for Commission review in accordance with § 2.341 or the Commission takes review *sua sponte*.

(b) Where the public interest so requires, the Commission may direct that the presiding officer certify the record to it without an initial decision, and may:

(1) Prepare its own decision which will become final unless the Commission grants a petition for reconsideration under § 2.345; or

(2) Omit an initial decision on a finding that due and timely execution of its functions imperatively and unavoidably so requires.

(c) An initial decision will be in writing and will be based on the whole record and supported by reliable, probative, and substantial evidence. The initial decision will include:

(1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on-the-record;

(2) All facts officially noticed and relied on in making the decision;

(3) The appropriate ruling, order, or denial of relief with the effective date;

(4) The time within which a petition for review of the decision may be filed, the time within which answers in support of or in opposition to a petition for review filed by another party may be filed and, in the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

Subpart H—Rulemaking

§ 2.800 Scope and applicability.

(a) This subpart governs the issuance, amendment, and repeal of regulations in which participation by interested persons is prescribed under Section 553 of title 5 of the U.S. Code.

(b) The procedures in §§ 2.804 through 2.810 apply to all rulemakings.

(c) The procedures in §§ 2.802 through 2.803 apply to all petitions for rulemaking except for initial applications for standard design certification rulemaking under subpart B of part 52 of this chapter, and subsequent petitions for amendment of an existing design certification rule filed by the original applicant for the design certification rule.

(d) The procedures in §§ 2.811 through 2.819, as supplemented by the provisions of subpart B of part 52, apply to standard design certification rulemaking.

[72 FR 49481, Aug. 28, 2007]

§ 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person, including an application for design certification under subpart B of part 52 of this chapter.

[72 FR 49482, Aug. 28, 2007]

§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or rescind any regulation. The petition should be addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by facsimile; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>; by e-mail to MSHD.Resource@nrc.gov; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-

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0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing to the Chief, Rulemaking, Directives, and Editing Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. A prospective petitioner also may telephone the Rulemaking, Directives, and Editing Branch on (301) 415-7163, or toll free on (800) 368-5642, or send e-mail to NRCREP@nrc.gov.

(1) In any consultation prior to the filing of a petition for rulemaking, the assistance that may be provided by the NRC staff is limited to—

(i) Describing the procedure and process for filing and responding to a petition for rulemaking;

(ii) Clarifying an existing NRC regulation and the basis for the regulation; and

(iii) Assisting the prospective petitioner to clarify a potential petition so that the Commission is able to understand the nature of the issues of concern to the petitioner.

(2) In any consultation prior to the filing of a petition for rulemaking, in providing the assistance permitted in paragraph (b)(1) of this section, the NRC staff will not draft or develop text or alternative approaches to address matters in the prospective petition for rulemaking.

(c) Each petition filed under this section shall:

(1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;

(2) State clearly and concisely the petitioner's grounds for and interest in the action requested;

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In

support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Director, Division of Administrative Services, Office of Administration, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will make a copy of the docketed petition available at the NRC Web site, <http://www.nrc.gov>. Public comment may be requested by publication of a notice of the docketing of the petition in the FEDERAL REGISTER, or, in appropriate cases, may be invited for the first time upon publication in the FEDERAL REGISTER of a proposed rule developed in response to the petition. Publication will be limited by the requirements of Section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

(f) If it is determined by the Executive Director for Operations that the petition does not include the information required by paragraph (c) of this section and is incomplete, the petitioner will be notified of that determination and the respects in which the petition is deficient and will be accorded an opportunity to submit additional data. Ordinarily this determination will be made within 30 days from the date of receipt of the petition by the Office of the Secretary of the Commission. If the petitioner does not submit additional data to correct the deficiency within 90 days from the date of notification to the petitioner that the petition is incomplete, the petition may be returned to the petitioner without prejudice to the right of the petitioner to file a new petition.

(g) The Director, Division of Administrative Services, Office of Administration, will prepare on a semiannual

basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room.

[44 FR 61322, Oct. 25, 1979, as amended at 46 FR 35487, July 9, 1981; 52 FR 31609, Aug. 21, 1987; 53 FR 52993, Dec. 30, 1988; 54 FR 53315, Dec. 28, 1989; 56 FR 10360, Mar. 12, 1991; 59 FR 44895, Aug. 31, 1994; 59 FR 60552, Nov. 25, 1994; 62 FR 27495, May 20, 1997; 63 FR 15742, Apr. 1, 1998; 64 FR 48949, Sept. 9, 1999; 68 FR 58799, Oct. 10, 2003; 73 FR 5717, Jan. 31, 2008; 74 FR 62679, Dec. 1, 2009]

§ 2.803 Determination of petition.

No hearing will be held on the petition unless the Commission deems it advisable. If the Commission determines that sufficient reason exists, it will publish a notice of proposed rulemaking. In any other case, it will deny the petition and will notify the petitioner with a simple statement of the grounds of denial.

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the FEDERAL REGISTER a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

(b) The notice will include:

(1) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined will be made available at the NRC Web site, <http://www.nrc.gov>;

(3) The authority under which the regulation is proposed;

(4) The time, place, and nature of the public hearing, if any;

(5) If a hearing is to be held, designation of the presiding officer and any special directions for the conduct of the hearing; and

(6) Such explanatory statement as the Commission may consider appropriate.

(c) The publication or service of notice will be made not less than fifteen (15) days prior to the time fixed for hearing, if any, unless the Commission for good cause stated in the notice provides otherwise.

(d) The notice and comment provisions contained in paragraphs (a), (b), and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(e) The Commission shall provide for a 30-day post-promulgation comment period for—

(1) Any rule adopted without notice and comment under the good cause exception on paragraph (d)(2) of this section where the basis is that notice and comment is “impracticable” or “contrary to the public interest.”

(2) Any interpretative rule, or general statement of policy adopted without notice and comment under paragraph (d)(1) of this section, except for those cases for which the Commission finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(f) For any post-promulgation comments received under paragraph (e) of this section, the Commission shall publish a statement in the FEDERAL REGISTER containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

[27 FR 377, Jan. 13, 1962, as amended at 50 FR 13010, Apr. 2, 1985; 64 FR 48949, Sept. 9, 1999]

§ 2.805 Participation by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of