Rules and Regulations

Federal Register
Vol. 80, No. 194
Wednesday, October 7, 2015

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AI30

[NRC–2009–0044]

Revisions to the Petition for Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to clarify and streamline its process for addressing petitions for rulemaking (PRMs). These amendments are intended to improve transparency and to make the PRM process more efficient and effective.

DATES: This final rule is effective on November 6, 2015.

ADDRESSES: Please refer to Docket ID NRC–2009–0044 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0044. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration (ADM), telephone: 301–415–3280, email: *Cindy.Bladey@nrc.gov*; or Anthony de Jesús, Senior Regulations Specialist, RADB, ADM, telephone: 301–415–1106, email: *Anthony.deJesus@nrc.gov*; or Jennifer Borges, Regulations Specialist, RADB, ADM, telephone: 301–415–3647, email: *Jennifer.Borges@nrc.gov*; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Discussion
III. Public Comment Analysis
IV. Section-by-Section Analysis
V. Summary of the NRC's Petition for Rulemaking Process
VI. Regulatory Analysis
VII. Regulatory Flexibility Certification
VIII. Backfitting and Issue Finality
IX. Plain Writing
X. Environmental Impact: Categorical Exclusion
XI. Paperwork Reduction Act Statement
XII. Congressional Review Act
XIII. Voluntary Consensus Standards
XIV. Availability of Documents

I. Background

The NRC's requirements, policies, and practices governing the PRM process have remained substantially unchanged since their initial issuance in 1979 (44 FR 61322; October 25, 1979). During the past 20 years, the NRC has received an average of nine PRMs per year and plans its budget and assigns resources based on this average. In recent years, however, the NRC has experienced a substantial increase in the number of PRMs submitted for consideration and docketed 25 PRMS in fiscal year (FY) 2011 alone. This increase in PRMs has presented a significant resource challenge to the NRC.

In a memorandum to the other Commissioners entitled, ''Streamlining the NRR [Office of Nuclear Reactor Regulation] Rulemaking Process'' (COMNJD–06–0004/COMEXM–06–0006), dated April 7, 2006 (ADAMS Accession No. ML060970295), then-Chairman Nils J. Diaz and then-Commissioner Edward McGaffigan, Jr., proposed that, because of the general increase in rulemaking activities, the NRC staff should streamline its rulemaking process by removing unnecessary constraints, while simultaneously enhancing the transparency of and public participation in the process. The memorandum also invited the development of additional mechanisms for ''streamlining and increasing the transparency of the rulemaking process, thus allocating the appropriate level of resources for the most important rulemaking actions and ensuring that the staff's hands are not tied by perceived or real procedural prerequisites that are necessary for a given rulemaking.''

In a staff requirements memorandum (SRM) dated May 31, 2006 (ADAMS Accession No. ML061510316), responding to COMNJD–06–0004/COMEXM–06–0006, the Commission directed the NRC staff to undertake numerous measures to streamline the rulemaking process, including an evaluation of the overall effectiveness of the interoffice Rulemaking Process Improvement Implementation Plan (ADAMS Accession No. ML031360205), and to ''further seek to identify any other potential options that could streamline the rulemaking process.'' The Commission also instructed the NRC staff to identify other potential options that could streamline the rulemaking process for all program offices.

In response to the Commission's directives, the NRC staff provided its recommendations to the Commission in SECY–07–0134, ''Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan,'' dated August 10, 2007 (ADAMS Accession No. ML071780644). The NRC staff included in SECY–07–0134 a recommendation to review the NRC's PRM process with the objective to reduce the time needed to complete an action. The NRC staff also recommended in SECY–07–0134 that

the NRC review the procedures used by other Federal agencies to process PRMs in order to identify best practices that could make the NRC's PRM process more timely and responsive, while also ensuring that PRMs are handled in a manner that is open, transparent, and compliant with the Administrative Procedure Act (APA), Title 5 of the *United States Code* (U.S.C.), Section 551 *et seq.* In an SRM responding to SECY–07–0134, dated October 25, 2007 (ADAMS Accession No. ML072980427), the Commission indicated support for the NRC staff's recommended review of the PRM process: ''The Petition for Rulemaking process needs some increased attention and improvement. The staff's overall effort to improve the [PRM] process should focus on provisions that would make the NRC's process more efficient while improving the process' transparency and consistency.''

Concurrently, in an SRM responding to COMGBJ–07–0002, ''Closing Out Task Re: Rulemaking on [part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR)] Tables S–3 and S–4,'' dated August 6, 2007 (ADAMS Accession No. ML072180094), the Commission directed the NRC staff to ''consider developing a process for dispositioning a petition in a more effective and efficient manner so that existing petitions that are deemed old can be closed out in a more timely manner and prevent future petitions from remaining open for periods longer than necessary.''

In response to the Commission's directives, the NRC staff examined the regulations, policies, procedures, and practices that govern the NRC's PRM process, as well as the practices and processes used by several other Federal agencies to resolve PRMs.

Consequently, the NRC published a proposed rule to amend the PRM process in the **Federal Register** on May 3, 2013 (78 FR 25886). The public comment period for the proposed rule closed on July 17, 2013. This final rule has been informed by public comments and reflects the NRC's goal to make its PRM process more efficient and effective, while enhancing transparency and public understanding of the PRM process.

II. Discussion

A. The NRC's Framework for Dispositioning a PRM

The administrative procedures that a Federal agency must follow with respect to PRMs are codified in the APA, 5 U.S.C. 553. Paragraph 553(e) provides that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' In addition, 5 U.S.C. 555(e) provides that ''[p]rompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding'' and that ''[e]xcept in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.'' However, the APA does not provide further detail on how agencies should disposition a PRM or what constitutes ''prompt'' notice. A brief survey of other Federal agencies' practices showed that the NRC has a robust and active PRM program; most agencies do not include requirements in the CFR for processing PRMs.

The NRC's requirements governing the rulemaking process are set forth in 10 CFR part 2, ''Agency Rules of Practice and Procedure,'' subpart H, ''Rulemaking.'' In particular, 10 CFR 2.802, ''Petition for rulemaking,'' and 10 CFR 2.803, ''Determination of petition,'' establish the NRC's framework for disposition of a PRM concerning the NRC's regulations. The NRC's requirements for PRMs have remained substantially unchanged since their initial issuance in 1979, and the NRC's processes and procedures for PRMs historically have been established by and implemented through internal NRC policies and practices. To improve the PRM process, the NRC has reviewed both its regulatory framework associated with the PRM process and its internal policies, procedures, and practices.

B. Changes to the PRM Process

This final rule clarifies and refines the NRC's long-standing practices for processing PRMs. The NRC believes that these amendments improve our current policies and practices for evaluating PRMs and communicating information on the status of PRMs and rulemaking activities to the petitioners and the public. By establishing a clearly defined administrative process to reflect agency action on a PRM, the NRC has enhanced the consistency, timeliness, and transparency of our actions and increased the efficient use of NRC resources.

NRC Consultation Assistance to Petitioners

A significant change in this final rule expands the consultation assistance that the NRC staff may provide to the petitioner. Currently, consultation on a PRM is limited to the pre-filing stage; the NRC has revised its requirements to allow petitioners to consult directly with the NRC staff before and after filing a PRM with the NRC and to clarify what consultation assistance the NRC is permitted to provide. This change provides an opportunity for additional interaction with the petitioner after filing and will increase communication on issues of concern to the petitioner and improve the transparency of the petition process.

Content of a Petition

This final rule also clarifies and expands the description of the kind of information that must be included in a petition. At times, a submitter may fail to include in the petition adequate information for the NRC to process the request, which creates the potential for processing delays and the need for the NRC to request additional information. In particular, this final rule adds a cross-reference to existing NRC requirements for the inclusion of an environmental report with those PRMs under 10 CFR 51.68, ''Environmental report—rulemaking,'' that seek exemption from licensing and regulatory requirements for authorizing general licenses for any equipment, device, commodity or other product containing byproduct material, source material or special nuclear material. This change increases the likelihood that the NRC will have complete information at the time a petition is filed, which will assist the NRC in processing the petition in a timely manner.

Changes in Deadlines

This final rule removes the implied and actual deadlines for docketing, for both the NRC and for the public. The NRC's internal goal to docket a new petition has not changed; the NRC will continue its current practice to docket a new petition within 30 days of receipt. However, based on the increased number and complexity of PRMs the NRC has been receiving, this final rule will not include this target so as to avoid setting unrealistic expectations in instances where NRC staff requires more than 30 days to deliberate and decide the appropriate course of action. The NRC staff may require more time to make initial decisions when a PRM includes complex issues or there are competing priorities.

This final rule also removes the deadline for a petitioner to resubmit a PRM returned by the NRC because it did not meet the NRC's docketing requirements. Formerly, the NRC would advise the petitioner when a PRM did not meet the docketing requirements and hold the PRM for 90 days to allow the petitioner to submit a revised petition, before formally rejecting the

PRM. Under the docketing process in this final rule, the NRC will simply return the PRM to the petitioner with an explanation why the petition was not docketed, with no time period specified by which the PRM must be resubmitted. A resubmitted PRM will be considered by the NRC ''without prejudice;'' that is, the NRC will not consider the petition as having been previously denied on the merits solely because the initial submission was returned due to procedural deficiencies. This change clarifies that there is no deadline for resubmission of a PRM.

Suspension Requests

The NRC's proposed rule would have established two separate paths for obtaining suspension of an adjudication involving licensing proceedings (''adjudicatory licensing proceeding''), in order to provide clarity to the way in which a petitioner could request suspension. The NRC received several comments that, for a variety of reasons discussed later in this final rule, did not support the proposed revisions. After considering the comments on the proposed rule, the NRC has determined that there are a number of additional factors for the NRC to consider with respect to requests for suspension of adjudicatory proceedings based on PRMs. The NRC intends to gather additional stakeholder input on those factors before developing a final NRC provision on suspension requests; therefore, to facilitate timely adoption of the clarifications and process improvements presented in the proposed PRM rule, the NRC has decided to retain, in unchanged form, the suspension language formerly located in § 2.802(d); to re-designate it as § 2.802(e) in this final rule; and to evaluate these types of suspensions in a subsequent rulemaking. However, in response to public comments, the NRC's new title for this paragraph (the former paragraph (d) did not contain a title) indicates 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) of § 2.802 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.

Minor Re-Structuring From Proposed Rule

This final rule has been restructured slightly from the proposed rule; for clarity, all PRM provisions that address the requirements applicable to the petitioner are in one section (§ 2.802), and the NRC's actions on a PRM are in a separate section (§ 2.803). An overview of the revised docketing process follows, and a detailed discussion of all changes, including the reorganization of §§ 2.802 and 2.803 and conforming changes, is provided in Section IV, ''Section-by-Section Analysis,'' of this final rule.

This final rule codifies the NRC's historical PRM docketing review policy and practice of notifying the petitioner that the NRC has received the PRM, evaluating the PRM information according to specified docketing criteria, and posting the petition online. At its discretion, the NRC may request public comment on a docketed petition through a notice published in the **Federal Register**.

NRC's Docketing Review of a PRM

The NRC describes the process and criteria it uses to determine if a PRM may be docketed in § 2.803. In the proposed rule, the NRC referred to this step as ''acceptance.'' In this final rule, the NRC uses the term ''docketing,'' and no longer uses the term ''acceptance.'' The NRC is making this change to prevent any potential misunderstanding that ''acceptance'' means that the NRC has agreed with the substance of the PRM and has decided that a rule should be developed and adopted as suggested by the petitioner in the PRM. After the close of the public comment period on this proposed rule, the NRC noted an example of possible misunderstanding in connection with public media reports on the NRC's notice of docketing for PRM–51–31, ''Environmental Impacts of Spent Fuel Storage During Reactor Operation'' (79 FR 24595; May 1, 2014). The NRC recognizes that it uses the terms, ''acceptance review'' and ''acceptance'' to refer to the NRC's process for evaluating a license application to determine if it meets the NRC's minimum standards for docketing. The NRC's recent experience suggests that the general public may be misled by the use of the term, ''acceptance,'' in the context of PRMs. Accordingly, the NRC is not using this term in paragraphs (b) or (c) of § 2.803 in this final rule.

Section 2.803 of this final rule describes, without change from the proposed rule, the NRC's docketing review process for a PRM, including what actions the NRC will take if the NRC determines that the PRM does not meet the NRC's requirements for docketing. This section also contains the criteria that the NRC uses to determine whether a PRM may be docketed. These three criteria are: (1) The PRM includes the information required by § 2.802(c), (2) the regulatory changes requested in the PRM are within the legal authority of the NRC, and (3) the PRM raises a potentially valid issue that warrants further detailed consideration by the NRC. These criteria are intended to ensure that the NRC does not unnecessarily expend rulemaking resources on unsupported petitions, petitions that the NRC has no legal authority to address through rulemaking, or on matters that are already addressed in the NRC's regulations. Including these criteria in the final rule, which reflect the NRC's existing practice but were not expressly set forth in the former language of 10 CFR part 2, subpart H, is intended to increase public understanding of the factors that the NRC uses in deciding whether to docket a PRM.

Administrative Closure of the PRM Docket

The NRC's process for dispositioning a PRM historically had been a matter of internal policy. With this final rule, the NRC is including a description of the dispositioning process in its regulations in order to enhance the transparency of its PRM process. The considerations for resolving a PRM are based on the NRC's experience in processing PRMs, insights from the NRC's initiative to streamline its PRM process, and information from the NRC's review of other Federal agencies' PRM regulations and practices. The amendments to the PRM process will allow the NRC to examine the merits of a PRM, the immediacy of the concern, the availability of NRC resources, whether the NRC is already considering the issue in other NRC processes, the relative priority of the issue raised in the PRM, any public comment received (if comment is requested), and the NRC's past decisions and current policy on the issue raised in the PRM. A summary of the NRC's considerations for dispositioning PRMs follows.

Section 2.803 of this final rule outlines the process for administrative closure of a PRM docket, once the NRC has determined its course of action for the PRM. The requirements provide two outcomes, derived from the NRC's recent review of the PRM process, for closing a PRM docket once the NRC has determined its course of action: (1) Denial of the PRM in its entirety, indicating a determination not to pursue a rulemaking action to address the issues raised in the PRM (this will also constitute final ''resolution'' of the PRM), or (2) initiation of a rulemaking action addressing some or all the requested rule changes in the PRM.

Initiation of a rulemaking action may take one of two forms: (1) Initiation of a new, ''standalone'' rulemaking focused on some or all of the matters raised in the PRM, or (2) integration of some or all of the matters raised in the PRM into an existing or planned rulemaking (including the early stages of an NRC effort to decide whether to pursue rulemaking, (*e.g.,* when the NRC is considering whether to develop a regulatory basis or to issue an advance notice of proposed rulemaking)). The NRC will publish a **Federal Register** notice to inform the public of its determined course of action, which will enhance the transparency of the NRC's PRM process and better communicate the NRC's planned approach to addressing the PRM. Implementing this process will enhance the NRC's ability to close PRMs effectively and efficiently.

With either course of action, the PRM docket will be closed, although the PRM itself would not be completely and finally ''resolved'' until the NRC acts on the last remaining portion of the PRM's request. Final NRC action on the PRM (''resolution'') will be a final rule addressing all of the petitioner's requested changes, a final rule addressing some (but not all) of the petitioner's requested changes, or a notice published in the **Federal Register** of the NRC's decision not to address any of the petitioner's requested changes in a rulemaking action.

Notification of Petitioners of Closure of a PRM Docket by the NRC

Paragraph (h)(2) of § 2.803 of this final rule explains how the NRC will notify the petitioner on the determination of the petition. The NRC sends the petitioner written notification and publishes a notice in the **Federal Register**, describing the NRC's determination to consider all or some of the issues in a rulemaking or to deny the petition. If the NRC closes a PRM docket under § 2.803(h)(2)(ii) but subsequently decides not to carry out the planned rulemaking to publication of a final rule, the NRC will notify the petitioner in writing of this decision and publish a notice in the **Federal Register** explaining the basis for its decision. These communications explain the basis for the NRC's decision not to carry out the planned rulemaking to publication and/or not to include the issues raised in the PRM in a rulemaking action.

''Resolution'' of a Petition for Rulemaking

Paragraph (i) of § 2.803 of this final rule addresses how a PRM ultimately is resolved and distinguishes final resolution of a PRM from administrative closure of a PRM docket, as described in § 2.803(h)(2). Resolution of one or more elements of a PRM occurs when the NRC publishes a **Federal Register** notice informing the public that any planned regulatory action related to one or more elements of the PRM has been concluded (*i.e.,* the NRC may resolve an entire PRM, or parts of a PRM at different times). For rulemaking actions, resolution requires publication in the **Federal Register** of the final rule related to the PRM, which will include a discussion of how the published final rule addresses the issues raised in the PRM.

Also, § 2.803(i) notes that the NRC's denial of the PRM at any stage of the regulatory process or the petitioner's withdrawal of the PRM before the NRC has entered the rulemaking process will conclude all planned regulatory action related to the PRM. As applicable, the **Federal Register** notice resolving the PRM will include a discussion of the NRC's grounds for denial or information on the withdrawal that the petitioner submitted. This type of resolution represents final agency action on those elements of the PRM that are addressed in the **Federal Register** notice.

Other Administrative Changes and Updates

Finally, several amendments in this final rule reflect routine administrative updates to information such as instructions for submitting petitions and communicating with the NRC. In recent years, the NRC, like many Federal agencies, has been moving away from formal, printed publications and making greater use of its Web site and other online resources such as the Federal rulemaking Web site (*www.regulations.gov*) to provide the public with more timely information on agency actions. The NRC no longer publishes a semiannual summary of PRMs, so the final rule explains in detail the various methods the public may use to access online status updates and other information on NRC rulemakings and PRMs. In addition to making these procedural updates, the NRC is providing additional information on its Web site to assist members of the public interested in the NRC's PRM process.

III. Public Comment Analysis

A. Overview of Public Comments

The NRC received seven comment letters on the proposed rule from a member of the public, a public advocacy group, non-governmental organizations, and the nuclear industry.

The majority of the comments received were in favor of the goals of the proposed amendments to the PRM process. However, three nuclear industry commenters (Nuclear Energy Institute (NEI), AREVA NP Inc. (AREVA), and STARS Alliance LLC. (STARS)) opposed the proposed amendments to new paragraphs (b) and (e) of § 2.802 and new paragraphs (h) and (i) of § 2.803. One comment from the Executive Board of the Organization of Agreement States (OAS) recommended enhancements to the availability of information regarding PRM activities. Two comments from a member of the public and the public advocacy group Three Mile Island Alert (TMIA) were out-of-scope, as they did not address the merits of the proposed rule.

Information about obtaining the comments received on the proposed rule is available in Section XIV, ''Availability of Documents,'' of this final rule.

B. Public Comments and Overall NRC Responses

Comments are organized by topics included in the proposed rule, followed by the NRC's response.

Licensing Proceedings in the Petition for Rulemaking Process

1. Comment: The NRC should not adopt the changes in proposed § 2.802(e)(2) but should return to the language in current § 2.802(d) because the proposed changes would effectively allow PRM petitioners to ''participate in licensing proceedings'' without meeting standing and contention admissibility standards applicable to those proceedings. NEI, AREVA, STARS.

NRC Response: The NRC did not intend to allow persons requesting a suspension of an adjudication in a licensing proceeding (''adjudicatory licensing proceeding'' in the proposed rule) to avoid having to meet applicable requirements for participating in the proceeding, such as the standing and contention admissibility standards for persons who wish to be a party (a person could also participate as an interested State, local government body, or Federally-recognized Indian tribe).

However, after further consideration of the comments, the NRC believes there are additional factors that the NRC must consider with respect to requests for suspension of adjudicatory proceedings based on PRMs. Stakeholder input on those factors would be desirable before developing a final NRC provision on these types of suspension requests.

Therefore, to facilitate the NRC's timely adoption of the clarifications and

process improvements presented in the proposed PRM rule, the NRC has decided to retain, in unchanged form, the suspension language formerly located in § 2.802(d) and now re-designated as paragraph (e) of § 2.802 in this final rule. The NRC will evaluate these suspensions in a subsequent rulemaking. However, in response to the issues raised in the comment summary, the heading for § 2.802(e) states that the suspension is with respect to an ''adjudication involving licensing.'' Neither the addition of the heading to this paragraph nor its re-designation from paragraph (d) to (e) of § 2.802 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.

2. Comment: The NRC should not adopt the changes in proposed § 2.802(e) but should return to the language in current § 2.802(d). The proposed rule appears to address extraordinary circumstances that occurred following the Fukushima accident, when petitions were filed with the NRC to initiate rulemaking to address safety issues associated with the accident or to suspend certain licensing proceedings because of issues related to the Fukushima accident.

The NRC has not explained why these petitions were problematic or why a rulemaking solution is needed, which itself has created separate problems. The Commission has inherent authority to take action in individual proceedings as necessary; in support of this comment, commenters cited the NRC's *Policy Statement on the Conduct of Adjudications,* 48 NRC 18 (1998). NEI, AREVA, STARS.

NRC Response: The NRC agrees. The origins of the proposed changes in § 2.802(d) were the NRC's procedural and administrative lessons-learned from dealing with the rulemaking and suspension petitions filed with the NRC after the Fukushima accident. The Commission agrees that it has inherent authority to take action in individual proceedings as it deems necessary, at any time, in response to a suspension request in whatever form.

However, upon consideration, the NRC believes a number of additional factors should be considered by the NRC before making changes to the suspension provision in former § 2.802(d). Stakeholder input on those factors is desirable in developing any final NRC provision on suspension requests. Accordingly, the NRC has decided to retain, in unchanged form, the suspension language formerly located in paragraph (d) and now re-designated as paragraph (e) of § 2.802 in this final rule. The re-designation of the suspension provision from paragraph (d) to paragraph (e) of § 2.802 is an administrative change intended to minimize the need for re-designations of paragraphs in future revisions to § 2.802. The NRC is not making changes to the legal requirements governing a PRM petitioner's request for suspension as a result of this re-designation.

Determination and Resolution of Petition for Rulemakings

1. Comment: The proposed revisions to § 2.803(h) and (i), creating a two-part process for closing a PRM, will confuse, rather than clarify, the agency's procedure for resolving PRMs. Final disposition of the PRM should occur either when the NRC denies the PRM, or when the NRC grants the PRM by initiating a rulemaking. There is no reason to withhold ''final action'' on a PRM, which has already effectively been granted, until resolution of the resultant rulemaking proceeding. The NRC's determination of whether to deny a PRM or initiate a rulemaking should result in the PRM's closure. At that point, a decision has been made on whether the issues raised in the PRM are worthy of further review or not. That decision is sufficient to close the PRM, even if the PRM's substantive request is still subject to deliberation through the rulemaking process. NEI, AREVA, STARS.

NRC Response: The NRC agrees with the commenters' assertion that the NRC's determination whether to deny a PRM or initiate rulemaking should result in the PRM's closure. The NRC also agrees with the commenters' assertion that the NRC's decision to deny (in full or part) a PRM constitutes ''final agency action.''

However, an NRC decision closing a PRM docket on the basis of the NRC's intent to consider the PRM issues in a new or ongoing rulemaking is not the ultimate ''resolution'' of the PRM. An NRC decision closing a PRM docket and instituting rulemaking as proposed by the PRM would not constitute ''final agency action,'' inasmuch as the determination to consider the PRM issues in a rulemaking does not represent an NRC determination to propose or adopt a final regulation requested in the PRM (or alternatively, not to adopt a regulation as requested in the PRM). The proposed rule's new terminology was intended to distinguish between the NRC's procedures with respect to the closure of the PRM docket (''final disposition of the PRM'') versus the NRC's procedures for ultimate resolution of the rulemaking requests contained in the PRM.

The NRC recognizes that the statement of considerations for the proposed rule may not have been sufficiently clear in explaining the NRC's intent that the proposed revisions to § 2.802 are intended to (1) clearly indicate that the NRC may ''dispose'' of multiple requests for rulemaking in a PRM or portions of a request for rulemaking in a PRM, in two or more separate NRC actions, (2) reflect that there is no overall agency ''resolution'' of a PRM until there is final agency action on all of the rulemaking requests in the petition, and (3) use terms that clearly distinguish between the PRM docket (which is an NRC administrative process) and agency final action on the substantive rulemaking requests in the PRM.

This statement of considerations includes a more detailed explanation of these concepts in Section V, ''Summary of the NRC's Revised Petition for Rulemaking Process,'' which describes the PRM process and the rule terminology that applies to each stage and action of the PRM process. In addition, the NRC staff has developed a diagram entitled, ''The Petition for Rulemaking Process'' (Figure 1) (ADAMS Accession No. ML14259A474), which is available on the NRC's public Web site at *http://www.nrc.gov/about-nrc/regulatory/rulemaking/petition-rule.html*. This diagram is also reproduced in Section V. of this statement of considerations.

2. Comment: The commenters support the proposed rule language, which indicates that, if a PRM is ''granted,'' then the NRC will track the PRM through the rulemaking process. The commenters stated that the **Federal Register** notice for any resulting final rule should make clear its origin in (or relationship to) the previously ''granted'' PRM. The commenters also agreed that, if the NRC initiates a rulemaking in response to a PRM but terminates the rulemaking before publication of a final rule (either because of withdrawal by the petitioner or subsequent decision by the agency), then the NRC should publish a **Federal Register** notice providing a well-reasoned basis for its decision that is supported by the administrative record (*e.g.,* a regulatory/technical basis or a proposed rule and response to public comments). NEI, AREVA, STARS.

NRC Response: The NRC agrees with the commenters' assertion that if a PRM is ''granted,'' then the NRC should track a PRM through the rulemaking process, as suggested by the proposed rule. No

change was made to the final rule in response to this comment.

3. Comment: The **Federal Register** notice, which ensures that a PRM is administratively tracked throughout the rulemaking process, supports ''closing'' of a PRM upon the NRC's initial determination that the PRM should be denied or granted via initiation of a rulemaking. NEI, AREVA, STARS.

NRC Response: The NRC disagrees. The provisions in the proposed rule for ''tracking'' a PRM throughout the rulemaking process supported the ''closing'' of the PRM docket upon the NRC's initial determination that a PRM should be denied (in part), or granted. As discussed in response to an earlier comment, the final rule distinguishes between the closing of a PRM docket versus final agency action on all or a part of the substantive rulemaking requests in the PRM. Furthermore, this final rule clarifies that the NRC may ''dispose of'' and/or finally determine multiple requests for rulemakings in a PRM or portions of a request for rulemaking in a PRM, in two or more separate NRC actions. If there will be multiple NRC actions for a single PRM, the NRC must keep the PRM docket ''open'' until there is a final ''determination'' of the last remaining aspects of the rulemaking request in a PRM. At that point, the PRM docket may be closed as the NRC has completed its determination of how to ''treat'' the rulemaking requests. That ''treatment'' may be denial of that last remaining aspect (which would also ''resolve'' the PRM) or it may be a determination that the rulemaking request should be addressed in a rulemaking activity (either through a newly initiated rulemaking activity or included in an existing rulemaking). This determination, however, is not ''resolution'' of the PRM. Resolution only occurs when the agency either adopts a final rule as requested in the PRM, or declines to adopt a final rule as requested in the PRM.

Given the NRC's desire to have the flexibility to act on portions of rulemaking requests in a PRM, the NRC concludes that the PRM process must reflect procedures and terminology that clearly distinguish between NRC actions with respect to the PRM docket and NRC actions on the substance of the rulemaking. The commenter's proposal would, in the NRC's view, blur this distinction and would not facilitate clear understanding by all stakeholders on the NRC's PRM process. However, as discussed in response to Comment 1 of this section, the NRC has in this statement of considerations clarified the NRC's actions when making a determination on and resolving a PRM.

4. Comment: The NRC should not remove the language in § 2.802(f), which states that a determination of the adequacy of a PRM will ordinarily be made within 30 days of the NRC's receipt of the PRM. The use of the term ''ordinarily'' in the existing rule appears to provide the NRC with the same flexibility with respect to the 30-day target that the proposed rule states is the basis for the removal of the 30-day language. Therefore, given that the NRC apparently intends to continue its current practice of ordinarily issuing determinations within 30 days and the current rule language allows the NRC flexibility with respect to this timeframe, the rationale provided in the proposed rule does not support removal of the 30-day timeframe. Further, removing this timeframe from the rule increases regulatory uncertainty and decreases transparency, which is contrary to the purpose of this rulemaking. The rule should continue to provide petitioners with a reasonable degree of clarity with respect to the timeframes involved in the evaluation of PRMs. AREVA, NEI, STARS.

NRC Response: The NRC confirms the commenters' supposition that the NRC intends to continue its current practice to perform a docketing review and notify the petitioner in writing of the docketing of the PRM or the deficiencies found in the PRM within a 30-day period. However, the NRC disagrees with the commenter's recommendation to continue to include the 30-day timeframe. As the NRC stated in the proposed rule's statement of considerations, past experience has shown that lengthy and complex PRMs may require more than 30 days for a thorough docketing review. Furthermore, the number of lengthy and complex PRMs being received by the NRC each year is increasing. The NRC believes that including the 30-day timeframe in the final rule sets unrealistic expectations in instances where NRC staff requires more than 30 days to deliberate and decide the appropriate course of action.

No change was made to this final rule in response to these comments.

Petition for Rulemaking Activities

1. Comment: The NRC should publish a list of PRM activities and make it available in an easily identified location on the agency's Web site. 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.'' OAS.

NRC Response: The NRC agrees. The NRC's public Web site was modified to include a list of PRM activities in an easily identified location. The NRC Web site has a new Web page that lists all ''open'' petitions (*http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year/open-petitions-all-years.html*). This Web page, which supplements the Web pages listed in new paragraphs (j)(1) and (3) of § 2.803, may be accessed from the Petition for Rulemaking Dockets Web site (*http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html*). This list contains the year when a particular PRM was docketed, the Docket ID, the PRM docket number, and the title of all ''open'' petitions. The Docket IDs listed in the new Web page are linked to regulations.gov, which provides publicly available documents such as NRC-issued **Federal Register** notices, supporting documents, public comments, and other related documents. From this new Web page, the public can also subscribe to GovDelivery to receive notifications each time the Web page is updated. GovDelivery allows the NRC's Web site visitors to subscribe, via email, to agency social media content. Subscribers can customize their subscription list and choose settings for notification of added or changed information.

In addition, the NRC will continue publishing on the agency's Web site the Rulemaking Activities by Fiscal Year report, which includes descriptions of agency actions on PRMs. This report may be accessed from the Rulemaking Documents Web site at *http://www.nrc.gov/about-nrc/regulatory/rulemaking.html*.

No change was made to this final rule in response to these comments.

Comments in Support of Amendments

1. Comment: The commenter supports the NRC's proposed amendments to revise the PRM process. The commenter agrees that the proposed revisions would streamline the NRC rulemaking process, remove unnecessary constraints, enhance transparency, and clarify and improve communications with the petitioners who submit a PRM. Health Physics Society.

NRC Response: No response necessary.

No change was made to this final rule in response to these comments.

2. Comment: The commenter commends the NRC staff on its willingness to confer informally with PRM applicants.

NRC Response: No response necessary.

No change was made to this final rule in response to these comments.

Out-of-Scope Comments

1. Comment: The comment, ''The NRC completely failed us (TMIA) at every level of the rulemaking process,'' and an attachment, dated October 31, 2008, set forth the commenter's views as to the adequacy of the NRC's resolution of a PRM submitted by the commenter (PRM–73–11) and the commenter's views about the NRC's statements regarding public outreach at a public meeting. TMIA.

NRC Response: The NRC considers this comment to be out of the scope because it does not address the proposed requirements governing the PRM process changes in the proposed rule.

2. Comment: The comment describes the commenter's interactions with the NRC staff regarding concerns the commenter has raised related to the TMI accident and regarding upgrades to filters and vents at nuclear power plants. TMIA.

NRC Response: The NRC considers this comment to be out of the scope because it does not address the proposed requirements governing the PRM process changes in the proposed rule.

No change was made to this final rule in response to these comments.

IV. Section-by-Section Analysis

The NRC is amending its regulations to streamline its process for addressing PRMs. Additionally, the NRC is amending its regulations in §§ 2.802, 2.803, and 2.811 to make miscellaneous corrections and conforming changes. These changes include the reorganization of §§ 2.802 and 2.803, the addition of paragraph headings, updates to the PRM filing process, and editorial changes to the language for clarity and consistency.

A. Section 2.802, Petition for Rulemaking—Requirements for Filing

Paragraph (a), Filing a Petition for Rulemaking

Paragraph (a) of § 2.802, which informs petitioners how to submit a PRM, is revised to clarify and update the PRM filing process. Paragraph (a) specifies the regulations subject to a PRM by indicating that the NRC's regulations are contained under chapter I of 10 CFR.

Paragraph (b), Consultation With the NRC

Paragraph (b) of § 2.802, which provides the process by which a prospective petitioner may consult with the NRC before filing a PRM, now permits consultation with the NRC both before and after filing a PRM.

Paragraph (b)(1)(i), which establishes that petitioners may consult with the NRC staff about the process of filing and responding to a PRM, now includes other stages of the PRM process during which consultation may occur. Paragraph (b)(1)(i) limits NRC staff consultation on a PRM to describing the process for filing, docketing, tracking, closing, amending, withdrawing, and resolving a PRM. These limitations are consistent with the existing limitations on NRC participation in the filing of PRMs.

New paragraph (b)(3) is added to clearly specify that the NRC staff will not advise a petitioner on whether a PRM should be amended or withdrawn.

Paragraph (c), Content of Petition

Paragraph (c) of § 2.802, which generally describes the content requirements of a PRM, is restructured and revised. Paragraph (c)(1) establishes that a petitioner must clearly and concisely articulate in a PRM the information required under new paragraphs (c)(1)(i) through (c)(1)(viii). In paragraph (c)(1), the terms ''clearly and concisely'' are added to convey the NRC's expectation that PRMs be ''clear'' (*i.e.,* do not contain ambiguous or confusing arguments, terminology, or phraseology) and ''concise'' (*i.e.,* do not present the perceived problem or proposed solution with a description that is longer than necessary).

Paragraphs (c)(1)(i) through (c)(1)(viii) specify information that must be provided in each PRM. The former text of paragraph (c)(1), which required that a PRM set forth a general solution to a problem or specify the regulation that is to be revoked or amended, is revised and redesignated as new paragraph (c)(1)(v). The additional text under paragraphs (c)(1)(i) through (c)(1)(viii) describes the specific information required to be included in a PRM. Most of the requirements are similar to the information required in the existing rule, except that each topic is listed separately for increased clarity.

New paragraph (c)(1)(i) requires all petitioners to specify contact information—including a name, telephone number, mailing address, and email address (if available)—that the NRC may use to contact the petitioner. New paragraph (c)(1)(ii) specifies additional information for petitioners who are organizations or corporations to submit: The petitioner's organizational status, the petitioner's State of incorporation, the petitioner's registered agent, and the name and authority of the individual signing the PRM on behalf of the corporation or organization. By adding this paragraph, the NRC is reducing the likelihood of misleading the public about the organizational or corporate status and identity of a petitioner.

New paragraph (c)(1)(iii) includes information from existing paragraph (c)(3) and requires a petitioner to present the problem or issue that the petitioner believes the NRC should address through rulemaking. This added paragraph clarifies that a petitioner must specifically state the problem or issue that the requested rulemaking would address, including any specific circumstance in which the NRC's codified requirements are incorrect, incomplete, inadequate, or unnecessarily burdensome. Paragraph (c)(1)(iii) clarifies that the submittal of specific examples of incompleteness or unnecessary burden to support the petitioner's assertion that a problem or issue exists that the NRC should address through rulemaking would be of interest to the NRC when reviewing the PRM. Providing this information in the PRM will result in a clearer argument for the problems or issues being presented by a petitioner and will increase the efficiency of the NRC's review of the PRM.

New paragraph (c)(1)(iv) requires the petitioner to cite, enclose, or reference any publicly available data used to support the petitioner's assertion of a problem or issue. This requirement was in former paragraph (c)(3) but is now modified to add the phrase ''Cite, enclose, or reference'' to provide options to the petitioner for providing the supporting data. Paragraph (c)(1)(iv) specifies that the citations, enclosures, or references to technical, scientific, or other data must be submitted to support the petitioner's assertion that a problem or issue exists and that all submitted data must be publicly available; consequently the word ''relevant'' and the phrase ''reasonably available to the petitioner'' in former paragraph (c)(3) are removed.

New paragraph (c)(1)(v) includes information from former paragraph (c)(1) and requires a petitioner to present a proposed solution to the problems or issues identified in the PRM; this proposed solution may include revision or removal of specific regulations under 10 CFR chapter I. Rather than providing a ''general

solution'' as required by the former paragraph (c)(1), paragraph (c)(1)(v) now requires a petitioner to present a ''proposed solution'' to clarify that the solution is only a proposal for the NRC to consider. Paragraph (c)(1)(v) also provides an example—including ''specific regulations or regulatory language to add, amend, or delete in 10 CFR Chapter I''—to guide petitioners in preparing a proposed solution to the problem or issue identified in the PRM.

New paragraph (c)(1)(vi) requires a petitioner to provide an analysis, discussion, or argument linking the problem or issue identified in the PRM with the proposed solution. The requirement to provide supporting information was already included in former paragraph (c)(3). The requirement to explain through an analysis, discussion, or argument how the proposed solution would solve the problem or issue raised in the PRM is new.

New paragraph (c)(1)(vii) includes information from former paragraph (c)(1) and requires the petitioner to cite, enclose, or reference any other publicly available data or information that the petitioner deems necessary to support the proposed solution and otherwise prepare the PRM for the NRC's docketing review under § 2.803(b). Similar to paragraph (c)(1)(iv), the phrase ''Cite, enclose, or reference'' is added to provide options to the petitioner for providing the supporting data.

Text from former paragraph (c)(1) is revised and incorporated into new paragraph (c)(1)(v), as previously described. As a result, the former paragraph (c)(1) is removed.

Text from former paragraph (c)(2) is removed because it is generally incorporated into new paragraphs (c)(1)(i) through (c)(1)(iii), making the former paragraph (c)(2) unnecessary.

Text from former paragraph (c)(3), which required a petitioner to include various kinds of supporting information, is revised and incorporated into new paragraphs (c)(1)(iii), (c)(1)(iv), (c)(1)(vi), and (c)(1)(vii), as previously described. As a result, the former paragraph (c)(3) is removed.

In addition to the requirements in § 2.802(c)(1)(i)–(vii), new paragraph (c)(2) encourages the petitioner to consider the two other review criteria listed in new paragraph (b) of § 2.803 when preparing a PRM. The NRC does not intend to require specialized explanations that discourage potential petitioners from submitting PRMs. Paragraphs (c)(2)(i) and (ii) are intended to provide petitioners the opportunity to include information that will assist the NRC in its evaluation of the PRM under § 2.803(b). However, the NRC will not deny a petition solely on the basis that the petition did not provide information addressing paragraphs (c)(2)(i) and (ii).

New paragraph (c)(3) requires the PRM to designate a lead petitioner if the petition is signed by multiple petitioners. The NRC's former practice was to treat the first signature listed on a petition as that of the lead petitioner. New paragraph (c)(3) requires that a lead petitioner be designated in a PRM and codifies the NRC's practice of sending communications about the petition to the lead petitioner. New paragraph (c)(3) also alerts the public of the lead petitioner's responsibility to disseminate communications received from the NRC to all petitioners.

Paragraph (c)(1)(viii) adds a cross-reference to the environmental assessment requirements that apply to PRMs at 10 CFR 51.68.

Paragraph (d), [RESERVED]

Paragraph (d) of § 2.802 is reserved, and the subject matter addressed in former paragraph (d), on requests for suspension of adjudications involving licensing (''licensing proceedings'' in former paragraph (d)), is addressed without substantive change in paragraph (e).

Paragraph (e), Request for Suspension of an Adjudication Involving Licensing

Paragraph (e) of § 2.802 describes how a PRM petitioner may request a suspension of an adjudication in a licensing proceeding in which the PRM petitioner is a ''participant,'' on the basis of the matters addressed in the petitioner's PRM. The re-designation of the suspension provision from paragraph (d) to paragraph (e) is an administrative change intended to minimize the need for re-designations of paragraphs in future revisions to § 2.802. The NRC is not making changes to the legal requirements governing a PRM petitioner's request for suspension as a result of this re-designation.

Former paragraphs (e), (f), and (g) in § 2.802 are moved to § 2.803.

Paragraph (f), Amendment; Withdrawal

New paragraph (f) of § 2.802, which discusses amendment or withdrawal of a PRM by a petitioner, is added to inform petitioners where and how to submit these filings and what information should be included.

B. Section 2.803, Petition for Rulemaking—NRC Action

Section 2.803 describes how the NRC will process, consider, and make a determination on a PRM.

Paragraph (a), Notification of Receipt

New paragraph (a) of § 2.803 has no counterpart in the superseded version of § 2.803. New paragraph (a) of § 2.803 indicates that the NRC shall notify the petitioner that the NRC has received the PRM.

Paragraph (b), Docketing Review

New paragraph (b) of § 2.803 addresses docketing review—a matter that was formerly addressed in the superseded version of § 2.802(f). Paragraph (b) differs from former § 2.802(f) by stating clearly that the NRC will deny the PRM if it does not include the information required by § 2.802(c). It also differs from former § 2.802(f) by adding two new docketing criteria. Under the new docketing review process, the NRC will determine not only if the rulemaking changes requested in the petition are within the legal authority of the NRC but also that the PRM raises a potentially valid issue that warrants further detailed consideration by the NRC (*e.g.,* confirm that the NRC's regulations do not already provide what the PRM is requesting).

Paragraph (b) does not include the restriction in former § 2.802(f) limiting the docketing decision to the Executive Director for Operations, and is silent on which NRC official may make the docketing determination. Therefore, the Executive Director for Operations may delegate the docketing decision to the appropriate organizational level within the NRC staff.

Finally, paragraph (b) describes the process the NRC will use if the NRC determines that a PRM does not meet the requirements for docketing (*i.e.,* an ''*insufficient*'' PRM). Paragraph (b) differs from former § 2.802(f) by removing a 90-day period for a petitioner to fix and resubmit an insufficient PRM, with the deficiencies corrected. Under paragraph (b) a deficient PRM may now be resubmitted, with deficiencies addressed, at any time without prejudice or time limitation.

Paragraph (c), Docketing

New paragraph (c) of § 2.803 addresses docketing, which was addressed in former § 2.802(e). Paragraph (c)(1) lists three criteria, each of which must be met in order for the NRC to docket a PRM. That paragraph also expressly states that the NRC will assign a docket number to a PRM that is docketed. Paragraph (c)(2) describes how the NRC will make a docketed PRM available to the public, that is, by posting the document in ADAMS (the NRC's official records management

system), on the NRC's public Web site, and on the Federal rulemaking Web site (regulations.gov); and by publishing a notice of docketing in the **Federal Register**.

Paragraph (d), NRC Communication With Petitioners

New paragraph (d) of § 2.803 notifies the public that the NRC will send all communications to the lead petitioner identified in the petition, according to new paragraph § 2.802(c)(3), and that this communication will constitute notification to all petitioners. Therefore, any NRC obligation to inform a petitioner is satisfied when the NRC sends the required notification to the lead petitioner.

Paragraphs (e) Through (f), [RESERVED].

Newly designated paragraphs (e) through (f) of § 2.803 are marked ''Reserved.''

Paragraph (g), Public Comment on a Petition for Rulemaking; Hearings

New paragraph (g)(1) of § 2.803 incorporates information from former § 2.802(e) text pertaining to the NRC's discretion to request public comment on a docketed PRM. Information in the former § 2.802(e) that specified how a PRM may be published for public comment in the **Federal Register** is replaced by a concise statement specifying that the NRC, at its discretion, may solicit public comment on a docketed PRM.

When the NRC publishes a **Federal Register** notice (FRN) requesting public comment on a PRM, the NRC's current practice is to include standard language in the FRN cautioning the public not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. This new cautionary language is incorporated into this final rule. Paragraph (g)(2) includes this caveat so that affected stakeholders will be aware of this practice.

Paragraph (g)(3) denotes that no hearing will be held on a PRM unless the Commission determines to hold a hearing as a matter of its discretion. This rule of practice, formerly in § 2.803, is moved to paragraph 2.803(g)(3) and amended for clarity. The text ''the Commission deems it advisable'' is replaced with ''the Commission determines to do so, at its discretion.'' This amendment clarifies that the NRC has discretionary authority to hold a hearing on a docketed PRM.

Paragraph (h), Determination on a Petition for Rulemaking; Closure of Docket on a Petition for Rulemaking

Existing regulations in § 2.803 require the NRC to resolve PRMs by either issuing a notice of proposed rulemaking or denying the petition. New paragraph (h)(1) of § 2.803 codifies a nonexclusive list of the methods and criteria that the NRC may use to determine a course of action for a PRM. These methods and criteria include consideration of the issues raised in the PRM about its merits, the immediacy of an identified safety or security concern, the relative availability of resources, the relative issue priority compared to other NRC rulemaking activities, whether the NRC is already considering the issues in other NRC processes, the substance of public comments received, if requested, and the NRC's past decisions and current policy.

Paragraph (h)(1)(i) establishes that the NRC will determine whether a PRM will be granted based upon the merits of the PRM. For the purpose of this final rule, the term ''merits'' includes the completeness and technical accuracy of the documents, logic associated with the petitioner's desired rule change, and the appropriateness or worthiness of the desired change compared to the current regulatory structure (*e.g.,* existing regulation, associated regulatory guidance, and inspection program guidance).

Paragraph (h)(1)(ii) states that the NRC may determine whether a PRM will be docketed based upon the immediacy of the safety or security concerns raised in the PRM. By adding this paragraph, the NRC intends to first determine whether immediate regulatory action (*e.g.,* an order) is needed.

Paragraph (h)(1)(iii) states that the NRC may determine whether a PRM will be docketed based upon the availability of NRC resources and the priority of the issues raised in the PRM compared with other NRC rulemaking activities. By adding this paragraph, the NRC will establish that if immediate action is not necessary, the NRC will consider the availability of resources and compare the issues raised in the PRM to other NRC rulemaking issues to determine the PRM's priority relative to other rulemaking activities.

Paragraph (h)(1)(iv) states that the NRC may determine whether a PRM will be docketed based on whether the NRC is already considering the issues raised in the PRM in other NRC processes. The NRC has multiple processes for considering potential issues related to its mission: For example, the allegation process, formal and informal hearings, and Commission deliberation to determine appropriate action on issues not related to rulemaking. One resulting action could be to initiate a rulemaking, but the Commission has other options available, such as addressing the issue through an order, guidance, or an internal management directive. The NRC will use the most efficient process to resolve issues raised by a petitioner.

Paragraph (h)(1)(v) states that the NRC may determine a course of action on a PRM based on the substance of any public comments received, if public comments are requested. Although the NRC may decide not to request public comments on a PRM, if public comment is requested, the NRC will consider the information commenters provide when determining a course of action for a PRM.

Paragraph (h)(1)(vi) states that the NRC may determine what action will be taken on a PRM based on the NRC's past decisions and current policy related to the issues raised in the PRM. This paragraph will inform the public that the NRC could consider past Commission decisions when determining a course of action for a PRM.

Paragraph (h)(2) establishes a process for administrative closure of a PRM docket once the NRC has determined its course of action for the PRM using the methodology and criteria in paragraph (h)(1). Paragraph (h)(2) establishes that a PRM docket will be administratively closed when the NRC responds to the PRM by taking a regulatory action and publishing a document in the **Federal Register** that describes this action. New paragraphs (h)(2)(i) and (ii) provide two specific categories for administrative closure of a PRM docket. Paragraph (h)(2) states that the NRC will administratively close a PRM docket by taking a regulatory action in response to the PRM that establishes a course of action for the PRM. In this situation, the NRC will publish a notice in the **Federal Register** describing the determined regulatory action, including the related Docket ID, as applicable. Paragraph (h)(2)(i) explains that the NRC may administratively close a PRM docket by deciding not to undertake a rulemaking to address the issues that the PRM raised, effectively denying the PRM, and notifying the petitioner in writing why the PRM was denied. Paragraph (h)(2)(ii) explains that the NRC may administratively close a PRM docket by initiating a rulemaking action, such as addressing the PRM in an ongoing or planned rulemaking or initiating a new rulemaking activity. The NRC will

inform the petitioner in writing of its determination and the associated Docket ID of the rulemaking action.

Paragraph (h)(2)(i) provides that the NRC may administratively close a PRM docket if the NRC decides not to engage in rulemaking to address the issues in the PRM. The NRC will publish a notice in the **Federal Register** informing the public that the petition has been denied and the grounds for the denial. This notice will address the petitioner's request and any public comments received by the NRC. The PRM docket will be closed by this method when the NRC concludes that rulemaking should not be conducted in response to the PRM. In certain cases, the NRC may deny some of the issues raised in a PRM but also decide to address the remaining issues by initiating a rulemaking action, as described in paragraph (h)(2)(ii). In these instances, the **Federal Register** notice will identify the rulemaking Docket ID for the related rulemaking.

With regard to new rulemakings, paragraph (h)(2)(ii) provides that the NRC may administratively close a PRM docket if the NRC decides to address the subject matter of the PRM in a new rulemaking. The NRC will publish a notice in the **Federal Register** explaining the NRC's decision to initiate the new rulemaking and informing the public of the Docket ID of the new rulemaking. The NRC will also add a description of the new rulemaking in the Government-wide *Unified Agenda of Federal Regulatory and Deregulatory Actions* (the Unified Agenda). The PRM docket will be closed by this method when the NRC determines that issues raised in the PRM merit consideration in a rulemaking and that there is currently no other rulemaking (ongoing or planned) into which the petitioner's requested rulemaking could be incorporated.

With regard to planned rulemakings, paragraph (h)(2)(ii) provides that a PRM docket may be administratively closed if the NRC is currently planning a rulemaking related to the subject of the PRM and the NRC decides to address the PRM in that planned rulemaking. The NRC will publish a notice in the **Federal Register** explaining the NRC's decision to address the PRM in a planned rulemaking and informing the public of the Docket ID of the planned rulemaking. A PRM docket will be closed by this method when the NRC determines that issues raised in the PRM merit consideration in a rulemaking and a planned rulemaking exists in which the issues raised in the PRM could be addressed.

With regard to ongoing rulemakings, paragraph (h)(2)(ii) provides that a PRM docket may be administratively closed if the NRC has a rulemaking in progress that is related to the issues raised in the PRM. The NRC will publish a notice in the **Federal Register** notifying the public that the subject of the PRM will be addressed as part of the ongoing rulemaking. The PRM docket will be closed by this method when the NRC determines that issues raised in the PRM merit consideration in a rulemaking and an ongoing rulemaking exists in which the issues in the PRM can be addressed.

The list of potential rulemaking actions in new paragraph (h)(2)(ii) is not intended to be exhaustive because the NRC may initiate other rulemaking actions, at its discretion, on issues raised in the PRM. For example, the NRC could extend the comment period for a proposed rule that addresses the subject matter of the PRM to allow it to be addressed in the ongoing rulemaking.

For all PRM dockets that are closed by initiating a rulemaking action, as described in paragraph (h)(2), the NRC will include supplementary information in the published proposed and final rule discussing how the NRC decided to address the issues raised in the PRM.

As further discussed in new paragraph (i)(2) of § 2.803, if the NRC closes a PRM docket under paragraph (h)(2)(ii) by initiating a rulemaking action, resolution will require the ultimate publication of a final rule discussing how the PRM is addressed in the published final rule. However, if later in the rulemaking process the NRC decides to terminate the associated rulemaking, termination of that rulemaking also constitutes denial of the PRM. The NRC will describe the agency's grounds for denial in a **Federal Register** notice, which will include the reason for the NRC's decision not to publish a final rule on the rulemaking associated with the PRM. The **Federal Register** notice also will address the issues raised in the PRM and significant public comments, if public comments were solicited. As with denials earlier in the PRM process, the NRC will notify the petitioner of the denial of the PRM.

Paragraph (i), Petition for Rulemaking Resolution

Under the former text in § 2.803, the NRC was required to resolve PRMs either by addressing the PRM issues in a final rule or by denying the petition. New paragraph (i) of § 2.803, *Petition for rulemaking resolution,* expands and clarifies how a PRM is resolved. Resolution of a PRM requires the NRC to conclude all planned regulatory action on the issues presented by the PRM and to publish a **Federal Register** notice to inform the public that all planned regulatory action on the PRM is concluded. Resolution of a PRM may occur in whole or in part; however, complete resolution of a PRM does not occur until all PRM issues are addressed in final by the NRC. New paragraph (i) of § 2.803 describes three methods for resolving a PRM: (1) Publication of a final rule, (2) withdrawal of the PRM by the petitioner before the NRC has entered into the rulemaking process, or (3) denial of the PRM by the NRC at any stage of the process. For resolution of a PRM through publication of a final rule, the NRC will include a discussion in the **SUPPLEMENTARY INFORMATION** section of the published final rule of how the regulatory action addresses the issues raised by the petitioner. For resolution of a PRM through denial by the NRC at any stage of the regulatory process, the NRC will publish a **Federal Register** notice discussing the grounds for denial of the PRM. For resolution of a PRM through withdrawal by the petitioner, the NRC will publish a notice in the **Federal Register** to inform the public that the petitioner has withdrawn the docketed PRM. Although the NRC expects that withdrawal would occur infrequently, paragraph (i) explains the means for the NRC to resolve the petition and inform members of the public of the withdrawal and resolution of the PRM.

The former text in paragraph (g) of § 2.802 indicated that a semiannual summary of PRMs before the Commission will be publicly available for inspection and copying. This statement is removed from this final rule because the NRC no longer publishes this semiannual summary. Instead, members of the public can find updates on the status of PRMs by the means described in paragraph (j) of § 2.803.

Paragraph (j), Status of Petitions for Rulemakings and Rulemakings

New paragraph (j) of § 2.803 explains where the public can view the status of PRMs and adds the heading, *Status of petitions for rulemakings and rulemakings,* to indicate the subject of the paragraph. Paragraph (j)(1) provides the Web site addresses for the most current information on PRMs and on active rulemakings. Paragraph (j)(2) indicates that the NRC will provide a summary of planned and existing rulemakings in the Government-wide Unified Agenda. Paragraph (j)(3) explains that information on all docketed PRMs, rulemakings, and public comments is available online in ADAMS and in the Federal rulemaking Web site at *http://www.regulations.gov*.

As previously discussed, if the NRC closes a PRM docket by initiating a rulemaking action under new paragraph (h)(2)(ii) of § 2.803 but later determines that a final rule should not be published, the NRC will publish a notice in the **Federal Register** explaining the grounds for its denial of the PRM, including the reason for the NRC's decision not to issue a final rule. The notice will be added into the previously closed PRM docket, and the status of the PRM will be updated and made available to the public as described in paragraphs (j)(1) through (j)(3).

C. Section 2.811, Filing of Standard Design Certification Application; Required Copies

Paragraph (e), *Pre-application consultation,* of § 2.811 explains the pre-application consultation process for standard design certification applications and is revised by correcting references and updating the email address for pre-application consultation. Corrections to paragraph (e) consist of removing the references to ''§ 2.802(a)(1)(i) through (iii)'' and replacing them with ''§ 2.802(b)(1),'' with respect to the subject matters permitted for pre-application consultation, correcting the term ''petitioner'' to ''applicant''; replacing the reference ''§ 2.802(a)(2)'' with ''§ 2.802(b)(2),'' regarding limitations on pre-application consultations; and removing the unnecessary capitalization of the word ''before.'' In addition, the email address for pre-application consultation is updated by replacing ''*NRCREP@nrc.gov*'' with ''*Rulemaking.Comments@nrc.gov*.''

V. Summary of the NRC's Revised Petition for Rulemaking Process

Any person may submit a PRM to the NRC, requesting that the NRC adopt a new regulation, amend (revise the language of) an existing regulation, or revoke (withdraw) an existing regulation. A ''person'' may be an individual or an entity such as an organization, company (corporation), a governmental body (*e.g.,* a State or a municipality), or a Federally-recognized Indian tribe.

When a PRM is received by the NRC, the NRC acknowledges the receipt of the petition by sending correspondence to the petitioner informing the petitioner of the NRC's receipt. The NRC then assigns the PRM for consideration to the NRC technical staff.

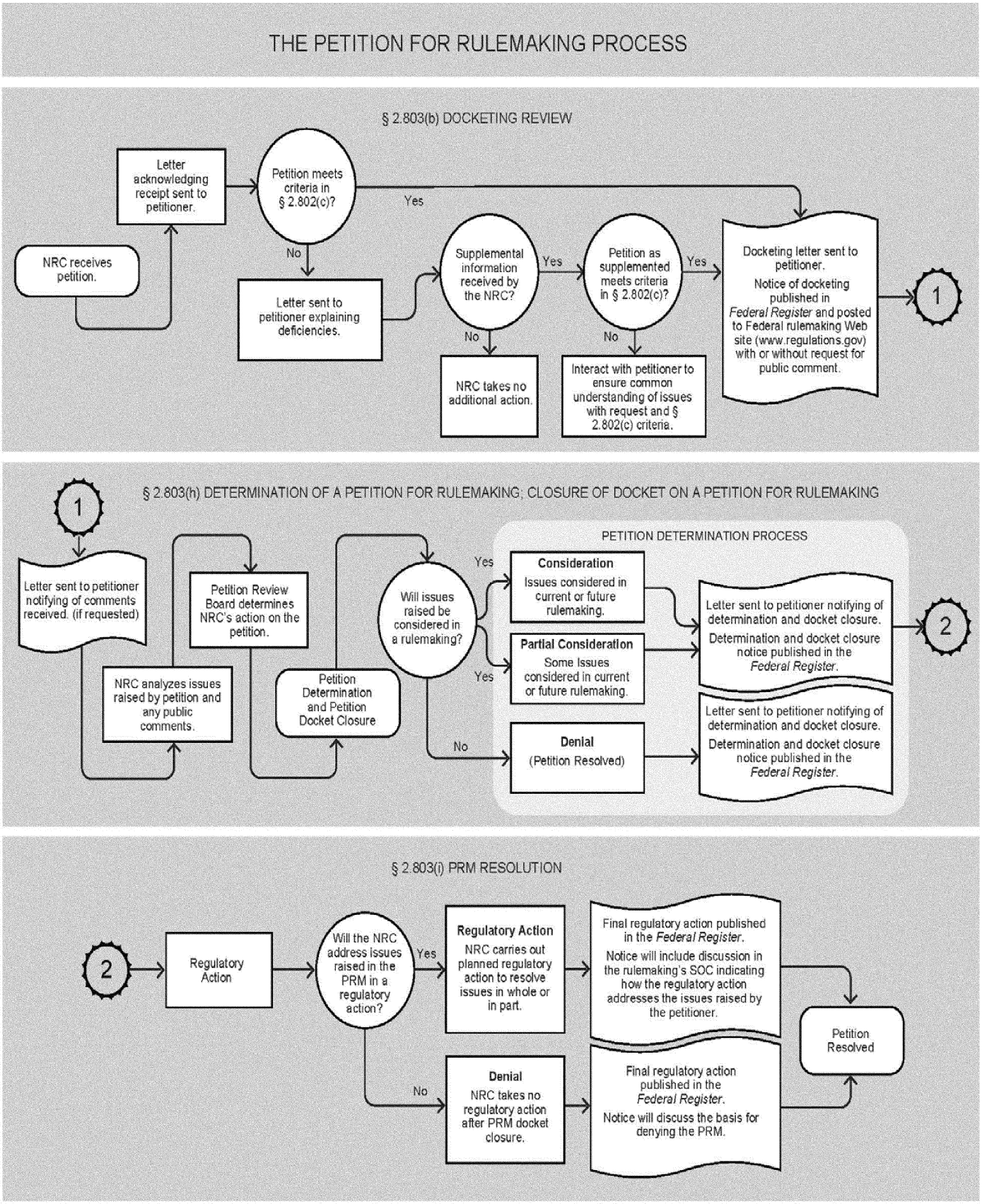
If the PRM does not include the information required by § 2.802, or the information provided is insufficient for the NRC to docket the petition, then the NRC sends a letter to the petitioner explaining the reasons why the NRC cannot docket the petition and begin to consider the requests in the petition. The NRC identifies what information is not included in the petition, or why the information provided is insufficient, and includes a reference to the corresponding paragraph in § 2.802(c) requiring the information.

The petitioner may resubmit the petition, with deficiencies addressed, at any time without prejudice or time limitation. If the petitioner provides the requested information and the information provided is determined by the NRC to be complete and meet the requirements in § 2.802(c), then the NRC dockets the petition and publishes a notice in the **Federal Register** announcing that the NRC has docketed the petition. The notice may or may not include an opportunity for members of the public to provide comments. In general, the NRC determines whether to provide an opportunity for public comment based upon a balancing of several factors, including whether the NRC needs additional information to help resolve the petition. Finally, the notice explains how members of the public can stay informed regarding any future NRC action that addresses the issues raised in the PRM.

The NRC's resolution of a PRM may occur, in whole or in part, by one or more of the following actions: (1) The NRC decides to adopt a final rule addressing the problem raised in the PRM (''granting'' the PRM); (2) the NRC decides not to adopt a new regulation or change an existing regulation as requested in the PRM (''denying'' the PRM); or (3) the petitioner decides to withdraw the request before the NRC has entered the rulemaking process. Complete resolution of the PRM does not occur until *all* portions of the PRM are addressed by the NRC in one of the three ways previously described. It is possible that the petitioner's concerns may not be addressed exactly as requested in the PRM. In this situation, the NRC would consider the PRM to be ''partially granted and partially denied,'' and the statement of considerations will explain how the final rule addresses the problem raised in the PRM, but why the NRC decided to adopt a regulatory approach, which is different than that described in the PRM.

If the PRM is denied by the NRC, or if the petition is withdrawn by the petitioner, the NRC will publish a notice in the **Federal Register** stating the grounds for the denial or informing the public that the petitioner has withdrawn the petition.

The NRC staff has developed a diagram entitled, ''The Petition for Rulemaking Process'' (Figure 1) (ADAMS Accession No. ML14259A474), which provides a visual representation of the NRC's PRM process under §§ 2.802 and 2.803, as amended in this final rule. This diagram is also available as a separate document on the NRC's public Web site at *http://www.nrc.gov/about-nrc/regulatory/rulemaking.html*.


THE PETITION FOR RULEMAKING PROCESS
§ 2.803(b) DOCKETING REVIEW
NRC receives petition.
Letter acknowledging receipt sent to petitioner.
Petition meets criteria in § 2.802(c)?
Yes
No
Letter sent to petitioner explaining deficiencies.
Supplemental information received by the NRC?
Yes
No
NRC takes no additional action.
Petition as supplemented meets criteria in § 2.802(c)?
Yes
No
Interact with petitioner to ensure common understanding of issues with request and § 2.802(c) criteria.
Docketing letter sent to petitioner.
Notice of docketing published in Federal Register and posted to Federal rulemaking Web site (www.regulations.gov) with or without request for public comment.
1
§ 2.803(h) DETERMINATION OF A PETITION FOR RULEMAKING; CLOSURE OF DOCKET ON A PETITION FOR RULEMAKING
1
Letter sent to petitioner notifying of comments received. (if requested)
NRC analyzes issues raised by petition and any public comments.
Petition Review Board determines NRC's action on the petition.
Petition Determination and Petition Docket Closure
Will issues raised be considered in a rulemaking?
Yes
Yes
No
PETITION DETERMINATION PROCESS
Consideration
Issues considered in current or future rulemaking.
Partial Consideration
Some Issues considered in current or future rulemaking.
Denial
(Petition Resolved)
Letter sent to petitioner notifying of determination and docket closure.
Determination and docket closure notice published in the Federal Register.
Letter sent to petitioner notifying of determination and docket closure.
Determination and docket closure notice published in the Federal Register.
2
§ 2.803(i) PRM RESOLUTION
2
Regulatory Action
Will the NRC address issues raised in the PRM in a regulatory action?
Yes
No
Regulatory Action
NRC carries out planned regulatory action to resolve issues in whole or in part.
Denial
NRC takes no regulatory action after PRM docket closure.
Final regulatory action published in the Federal Register.
Notice will include discussion in the rulemaking's SOC indicating how the regulatory action addresses the issues raised by the petitioner.
Final regulatory action published in the Federal Register.
Notice will discuss the basis for denying the PRM.
Petition Resolved

VI. Regulatory Analysis

This rule clarifies and streamlines the NRC's process for addressing PRMs. The amendments in this rule improve transparency and make the PRM process more efficient and effective. These amendments do not result in a cost to the NRC or to petitioners in this process, and a benefit accrues to the extent that potential confusion over the meaning of the NRC's regulations is removed.

The more substantive changes in this rule do not impose costs upon either the NRC or petitioners but instead benefit both. The process improvements for evaluating PRMs and activities addressing PRMs and establishing an administrative process for closing a PRM docket to reflect agency action on a PRM reduce burdens on petitioners, the NRC, and participants in the process.

The option of preserving the status quo is not preferred. Failing to correct errors and clarify ambiguities would result in continuing confusion over the meaning of the petition for rulemaking rules, which could lead to the unnecessary waste of resources. The NRC believes that this rule improves the consistency, timeliness, efficiency, and openness of the NRC's actions and increases the efficient use of the NRC's resources in its PRM process.

VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Backfitting and Issue Finality

The NRC has determined that the backfit rule does not apply to this final rule because these amendments are administrative in nature and do not involve any changes that impose backfitting as defined in 10 CFR chapter 1, or are inconsistent with any of the issue finality provisions in 10 CFR part 52.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act, as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

X. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action that is a categorical exclusion under 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

XI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget (OMB) control number.

XII. Congressional Review Act

This final rule is a rule as define in the Congressional Review Act (5 U.S.C. 801–808). However, OMB has not found it to be a major rule as defined in the Congressional Review Act.

XIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC has revised its regulations to streamline the process the NRC uses when it receives a PRM. This action concerns the NRC's procedures governing its consideration and resolution of PRMs. These procedures do not constitute a ''government unique standard'' within the meaning and intention of the National Technology Transfer and Advancement Act of 1995.

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through the methods indicated.

Document	ADAMS Accession No.
COMNJD–06–0004/COMEXM–06–0006, ''Streamlining the NRR Rulemaking Process''	ML060970295.
SRM–COMNJD–06–0004/COMEXM–06–0006, ''Streamlining the NRR Rulemaking Process''	ML061510316.
SECY–03–0131, ''Rulemaking Process Improvement Implementation Plan''	ML031360205.
SECY–07–0134, ''Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan''.	ML071780644.
SRM–SECY–07–0134, ''Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan''.	ML072980427.
SRM–COMGBJ–07–0002, ''Closing out Task Re: Rulemaking on Tables S–3 and S–4''	ML072180094.
Proposed Rule: Revisions to the Petition for Rulemaking Process	ML13107B459.
Comments on PR–10 CFR Part 2—Revisions to the Petition for Rulemaking Process	ML14149A306 (package).
Comment (01) of Scott Portzline on PR–10 CFR Part 2—Revisions to the Petition for Rulemaking Process	ML13140A166.
Comment (02) of Marvin I. Lewis re PR–10 CFR Part 2—Revisions to the Petition for Rulemaking Process	ML13178A162.
Comment (03) of Richard Vetter re PR–10 CFR Part 2—Revisions to the Petition for Rulemaking Process	ML13186A240.
Comment (04) of Alan Jacobson, Chair—Organization of Agreement States, regarding PR–10 CFR Part 2—Revisions to the Petition for Rulemaking Process.	ML13198A587.
Comment (05) of Pedro Salas, Director—Regulatory Affairs, AREVA NP Inc., regarding PR–10 CFR Part 2—Revisions to the Petition for Rulemaking Process.	ML13198A588.
Comment (06) of Ellen Ginsburg on behalf of Nuclear Energy Institute (NEI) re PR–10 CFR Part 2—Revisions to the Petition for Rulemaking Process.	ML13200A079.
Comment (07) of Scott Bauer on behalf of STARS Alliance re PR–10 CFR Part 2—Revisions to the Petition for Rulemaking Process.	ML13231A046.
The Petition for Rulemaking Process (diagram)	ML14259A474.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information; Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 2. Revise § 2.802 to read as follows:

§ 2.802 Petition for rulemaking—requirements for filing.

(a) *Filing a petition for rulemaking.* Any person may petition the Commission to issue, amend, or rescind any regulation in 10 CFR chapter I. The petition for rulemaking should be addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by email to *Rulemaking.Comments@nrc.gov;* or by hand delivery to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern time) on Federal workdays.

(b) *Consultation with the NRC.* A petitioner may consult with the NRC staff before and after filing a petition for rulemaking by contacting the Chief, Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 1–800–368–5642.

(1) In any consultation regarding the drafting or amendment of a petition for rulemaking, the assistance that the NRC staff may provide is limited to the following:

(i) Describing the process for filing, docketing, tracking, closing, amending, withdrawing, and resolving a petition for rulemaking;

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

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

(2) In any consultation regarding the drafting or amendment 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 petition for rulemaking.

(3) In any consultation regarding a petition for rulemaking, the NRC staff will not advise a petitioner on whether a petition should be amended or withdrawn.

(c) *Content of petition.* (1) Each petition for rulemaking filed under this section must clearly and concisely:

(i) Specify the name of the petitioner, a telephone number, a mailing address, and an email address (if available) that the NRC may use to communicate with the petitioner;

(ii) If the petitioner is an organization, provide additional identifying information (as applicable) including the petitioner's organizational or corporate status, the petitioner's State of incorporation, the petitioner's registered agent, and the name and authority of the individual who signed the petition on behalf of the organizational or corporate petitioner.

(iii) Present the specific problems or issues that the petitioner believes should be addressed through rulemaking, including any specific circumstances in which the NRC's codified requirements are incorrect, incomplete, inadequate, or unnecessarily burdensome;

(iv) Cite, enclose, or reference publicly-available technical, scientific, or other data or information supporting the petitioner's assertion of the problems or issues;

(v) Present the petitioner's proposed solution to the problems or issues raised in the petition for rulemaking (*e.g.,* a proposed solution may include specific regulations or regulatory language to add to, amend in, or delete from 10 CFR chapter I);

(vi) Provide an analysis, discussion, or argument that explains how the petitioner's proposed solution solves the problems or issues identified by the petitioner; and

(vii) Cite, enclose, or reference any other publicly-available data or information supporting the petitioner's proposed solution; and

(viii) If required by 10 CFR 51.68 of this chapter, submit a separate document entitled ''Petitioner's Environmental Report,'' which contains the information specified in 10 CFR 51.45.

(2) To assist the NRC in its evaluation of the petition for rulemaking, the petitioner should clearly and concisely:

(i) Explain why the proposed rulemaking solution is within the authority of the NRC to adopt; and

(ii) Explain why rulemaking is the most favorable approach to address the problem or issue, as opposed to other NRC actions such as licensing, issuance of an order, or referral to another Federal or State agency.

(3) If the petition is signed by multiple petitioners, the petition must designate a lead petitioner who is responsible for disseminating communications received from the NRC to co-petitioners.

(d) [Reserved]

(e) *Request for suspension of an adjudication involving licensing.* The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a participant pending disposition of the petition for rulemaking.

(f) *Amendment; withdrawal.* If the petitioner wants to amend or withdraw a docketed petition for rulemaking, then the petitioner should include the docket number and the date that the original petition for rulemaking was submitted in a filing addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; or by email to *Rulemaking.Comments@nrc.gov.*

■ 3. Revise § 2.803 to read as follows:

§ 2.803 Petition for rulemaking—NRC action.

(a) *Notification of receipt.* Following receipt of a petition for rulemaking, the NRC will acknowledge its receipt to the petitioner.

(b) *Docketing review.* (1) The NRC will evaluate the petition for rulemaking, including supporting data or information submitted under § 2.802(c), for sufficiency according to the review criteria in § 2.803(b).

(2) If the NRC determines that the petition for rulemaking does not include

the information set out in § 2.802(c), that the regulatory change sought by the petitioner is not within the legal authority of the NRC, or that the petition for rulemaking does not raise a potentially valid issue that warrants further consideration, then the NRC will notify the petitioner in writing and explain the deficiencies in the petition for rulemaking.

(3) The petitioner may resubmit the petition for rulemaking without prejudice.

(c) *Docketing.* (1) The NRC will docket a petition for rulemaking and assign a docket number to the petition if the NRC determines the following:

(i) The petition for rulemaking includes the information required by paragraph § 2.802(c),

(ii) The regulatory change sought by the petitioner is within the NRC's legal authority, and

(iii) The petition for rulemaking raises a potentially valid issue that warrants further consideration.

(2) A copy of the docketed petition for rulemaking will be posted in the NRC's Agencywide Documents Access and Management System (ADAMS) and on the Federal rulemaking Web site at: *http://www.regulations.gov*. The NRC will publish a notice of docketing in the **Federal Register** informing the public that the NRC is reviewing the merits of the petition for rulemaking. The notice of docketing will include the docket number and explain how the public may track the status of the petition for rulemaking.

(d) *NRC communication with petitioners.* If the petition is signed by multiple petitioners, any NRC obligation to inform a petitioner (as may be required under 10 CFR part 2, subpart H) is satisfied, with respect to all petitioners, when the NRC transmits the required notification to the lead petitioner.

(e) [Reserved]

(f) [Reserved]

(g) *Public comment on a petition for rulemaking; hearings.* (1) At its discretion, the NRC may request public comment on a docketed petition for rulemaking.

(2) The NRC will post all comment submissions at *http://www.regulations.gov* and enter the comment submissions into ADAMS, without removing identifying or contact information from comment submissions. Anyone requesting or aggregating comments from other persons for submission to the NRC is responsible for informing those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submissions.

(3) No adjudicatory or legislative hearing under the procedures of 10 CFR part 2 will be held on a petition for rulemaking unless the Commission determines to do so, at its discretion.

(h) *Determination on a petition for rulemaking; Closure of docket on a petition for rulemaking.* (1) *Determination.* Following docketing of a petition for rulemaking, the NRC's determination on the petition for rulemaking may be based upon, but is not limited to, the following considerations:

(i) The merits of the petition;

(ii) The immediacy of the safety, environmental, or security concern raised;

(iii) The availability of NRC resources and the priority of the issues raised in relation to other NRC rulemaking issues;

(iv) Whether the problems or issues are already under consideration by the NRC in other NRC processes;

(v) The substance of any public comment received, if comment is requested; and

(vi) The NRC's relevant past decisions and current policies.

(2) *Petition for rulemaking docket closure.* After the NRC determines the appropriate regulatory action in response to the petition for rulemaking, the NRC will administratively close the docket for the petition. The NRC will publish a notice describing that action with any related Docket Identification number (Docket ID), as applicable, in the **Federal Register**. The NRC may make a determination on a petition for rulemaking and administratively close the docket for the petition for rulemaking by:

(i) Deciding not to undertake a rulemaking to address the issue raised by the petition for rulemaking, and informing the petitioner in writing of the grounds for denial.

(ii) Initiating a rulemaking action (*e.g.,* initiating a new rulemaking, addressing the petition for rulemaking in an ongoing rulemaking, addressing the petition for rulemaking in a planned rulemaking) that considers the issues raised by a petition for rulemaking, and informing the petitioner in writing of this decision and the associated Docket ID of the rulemaking action, if applicable.

(i) *Petition for rulemaking resolution.* (1) *Petition for rulemaking resolution published in the* ***Federal Register***. The NRC will publish a **Federal Register** notice informing the public that it has concluded all planned regulatory action with respect to some or all of the issues presented in a petition for rulemaking. This may occur by adoption of a final rule related to the petition for rulemaking, denial by the NRC of the petition for rulemaking at any stage of the regulatory process, or the petitioner's withdrawal of the petition for rulemaking before the NRC has entered the rulemaking process. As applicable, the **Federal Register** notice will include a discussion of how the regulatory action addresses the issue raised by the petitioner, the NRC's grounds for denial of the petition for rulemaking, or information on the withdrawal. The notice will normally include the NRC's response to any public comment received (if comment is requested), unless the NRC has indicated that it will not be providing a formal written response to each comment received.

(2) *NRC decision not to proceed with rulemaking after closure of a petition for rulemaking docket.* If the NRC closes a petition for rulemaking docket under paragraph (h)(2)(ii) of this section but subsequently decides not to carry out the planned rulemaking to publication of a final rule, the NRC will notify the petitioner in writing of this decision and publish a notice in the **Federal Register** explaining the basis for its decision. The decision not to complete the rulemaking action will be documented as denial of the petition for rulemaking in the docket of the closed petition for rulemaking, in the Web sites, in the Government-wide *Unified Agenda of Federal Regulatory and Deregulatory Actions,* online in ADAMS, and at *http://www.regulations.gov* as described in paragraph (j) of this section.

(j) *Status of petitions for rulemaking and rulemakings.* (1) The NRC provides current information on rulemakings and petitions for rulemaking in the NRC Library at *http://www.nrc.gov/about-nrc/regulatory/rulemaking.html*.

(2) The NRC includes a summary of the NRC's planned and ongoing rulemakings in the Government-wide *Unified Agenda of Federal Regulatory and Deregulatory Actions* (the Unified Agenda), published semiannually. This Unified Agenda is available at *http://www.reginfo.gov/public/do/eAgendaMain/*.

(3) All docketed petitions, rulemakings, and public comments are posted online in ADAMS and at *http://www.regulations.gov*.

■ 4. In § 2.811, revise paragraph (e) to read as follows:

§ 2.811 Filing of standard design certification application; required copies.

* * * * *

(e) *Pre-application consultation.* A prospective applicant for a standard

design certification may consult with NRC staff before filing an application by writing to the Director, Division of New Reactor Licensing, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, with respect to the subject matters listed in § 2.802(b)(1). A prospective applicant also may telephone the Rules, Announcements, and Directives Branch, toll free on 1–800–368–5642, or send an email to *Rulemaking.Comments@nrc.gov* on these subject matters. In addition, a prospective applicant may confer informally with NRC staff before filing an application for a standard design certification, and the limitations on consultation in § 2.802(b)(2) do not apply.

Dated at Rockville, Maryland, this 1st day of October, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015–25563 Filed 10–6–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2015–3780; Airspace Docket No. 15–ACE–5]

Modification to Restricted Areas R–3601A & R–3601B; Brookville, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Restricted Areas R–3601A and R–3601B, Brookville, KS, to re-define the restricted area boundary segments described using the Missouri Pacific Railroad Track visual landmark. The restricted areas using agency information is also updated to include the military service of the using agency. This action does not affect the overall restricted area boundaries, designated altitudes, times of designation, or activities conducted within the restricted areas. Additionally, boundary segment amendments of the Smoky and Smoky High military operations areas (MOA), ancillary to the restricted areas amendments, are being made. Since R–3601A and R–3601B share boundaries with the Smoky and Smoky High MOAs, the FAA included discussion of the Smoky and Smoky High MOAs amendments in this rule. Lastly, the MOAs using agency is being amended to match the restricted areas using agency information.

DATES: Effective date 0901 UTC, December 10, 2015.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it makes administrative changes to the descriptions of restricted areas R–3601A and R–3601B, Brookville, KS.

Background

In August 1970, the FAA published a rule in the **Federal Register** (35 FR 10107, June 19, 1970) establishing the Brookville, KS, restricted areas R–3601A and R–3601B in support of U.S. Air Force (USAF) weapons delivery training requirements. The two restricted areas were originally established laterally adjacent to each other with different ceilings to be activated for use individually, as required. Then, in July 2007, the FAA published another rule in the **Federal Register** (72 FR 35917, July 2, 2007) that combined the restricted areas lateral boundaries, divided the combined areas vertically instead of laterally, and expanded the vertical limits to flight level 230 (FL230). The lower portion of the combined area (surface to but not including FL180) was re-designated as R–3601A and the upper portion (FL180 to FL230) as R–3601B. The new configuration supported USAF high altitude release bomb training requirements for fighter aircraft and new medium-to-high altitude release bomb training requirement for bombers.

When the restricted areas lateral boundaries were combined in 2007, the boundaries descriptions for R–3601A and R–3601B used the Missouri Pacific Railroad Track to identify a segment of the restricted area boundaries. The railroad track was removed years ago and portions of the railroad right-of-way is mostly obscured by trees or has been plowed under for agriculture. Satellite imagery was used to confirm that the railroad right-of-way is no longer clearly visible and is of little use to Visual Flight Rules (VFR) aircraft trying to navigate by ground reference in the Salina, KS, local area.

The FAA worked with the USAF to re-define the affected boundary segments using geographic (latitude/longitude) coordinates only. The new restricted area boundary descriptions overlay the boundaries previously identified by the visual landmarks that no longer exist. As a result of amending the restricted area boundaries, corresponding amendments to the Smoky and Smoky High MOAs boundaries are also necessary to retain shared boundary segments between the restricted areas and the MOAs.

Additionally, the R–3601A and R–3601B using agency information does not reflect the military service of the using agency listed. To correct this absence of information, the using agency information for the restricted areas is being updated. To ensure standard using agency information for the restricted areas and MOAs supporting the Smoky Hill Air National Guard Range, the Smoky and Smoky High MOAs using agency information is also being updated.

Military Operations Areas (MOA)

MOAs are established to separate or segregate non-hazardous military flight activities from aircraft operating in accordance with instrument flight rules (IFR), and to advise pilots flying under VFR where these activities are conducted. IFR aircraft may be routed through an active MOA only by agreement with the using agency and only when air traffic control can provide approved separation from the MOA activity. VFR pilots are not restricted from flying in an active MOA, but are advised to exercise caution while doing so. MOAs are nonregulatory airspace areas that are established or amended administratively and published in the National Flight Data Digest (NFDD) rather than through rulemaking procedures. When a nonrulemaking action is ancillary to a rulemaking action, FAA procedures allow for the nonrulemaking changes to be included in the rulemaking action. Since the Smoky and Smoky High MOAs amendments are ancillary to the R–3601A and R–3601B amendments being made, the MOA changes are addressed