

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 9

[Docket No. PRM-9-2]

#### Ohio Citizens for Responsible Energy, Inc.; Denial of a Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of a petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Ohio Citizens for Responsible Energy, Inc. (OCRE). The petition has been docketed by the Commission and assigned Docket No. PRM-9-2. The Petitioner requested that NRC amend 10 CFR part 9, "Public Records," by adding a subpart E entitled "Public Right of Access to Licensee-Held Information." This subpart would provide for public access to licensee-held documents, subject to limited exceptions, and include appeal procedures. The NRC is denying the petition because the additional recordkeeping and reporting proposed by the Petitioner is not necessary to protect the public health and safety or to ensure effective public participation in NRC adjudicatory hearings on licensing actions, and is contrary to internally and externally-driven initiatives to reduce unnecessary recordkeeping and reporting requirements.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, the Petitioner's response to these comments, the NRC's letter of denial to the Petitioner, and the congressional letters may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Maria E. Schwartz, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-1888; or [MES@nrc.gov](mailto:MES@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 10, 1994, OCRE, the petitioner, filed a petition for rulemaking under 10 CFR 2.802 with the NRC. The Petitioner subsequently filed an amendment to the petition on April 11, 1994. The Petitioner is a private, not-for-profit organization incorporated under the laws of the State of Ohio that specializes in research and advocacy on nuclear safety issues. The Petitioner also supports the right of meaningful public participation in the regulation of nuclear facilities.

The Petitioner requests that the NRC amend 10 CFR part 9, "Public Records," which addresses the public's right of access to information held by NRC. The Petitioner proposes an additional subpart E to part 9 entitled "Public Right of Access to Licensee-Held Information," which would provide for public access to licensee-held documents including draft documents, subject to exceptions necessary to protect certain sensitive information such as personal information, proprietary information, safeguard information, identity of confidential sources, and classified information. The proposed rule would include appeal procedures if a requester was not satisfied with a licensee's response to a request for information. Under the Petitioner's proposed appeal process, the requester could appeal the matter to an Administrative Judge (AJ) on the

Atomic Safety and Licensing Board Panel. The AJ's decision would be final and not further appealable.

The petition was docketed as PRM-9-2. NRC published a notice that announced the receipt of the petition and requested public comments on the suggested amendments in the Federal Register on June 13, 1994 (59 FR 30308). NRC received 27 comment letters and an additional letter responding to those comments from OCRE. Of the 27 responses, three endorsed the petition. These commenters included a public interest group and members of the public. Twenty-four commenters opposed the petition. These commenters were primarily utilities or representatives of utilities.

A response to the petition was delayed a number of times to consider the petition in light of the Commission's ongoing public information initiatives and legislative and executive branch directives on reducing unnecessary reporting and recordkeeping. For example, there was a significant delay associated with developing and implementing ADAMS, the Commission's electronic document library system. During the review period the staff contacted the petitioner to provide updates on the status of the agency's review. Nevertheless, the Commission finds this delay to be unacceptable. The Commission is committed to a more rigorous review of action on pending rulemaking petitions in order to prevent a recurrence of an unnecessary delay of this length and to assure timely response.

##### II. Discussion

The Petitioner's primary concern is that licensee-held documents are not accessible by members of the public and may contain information that the public would find useful in participating in NRC proceedings. The Petitioner asserts that rulemakings in the 1993-94 time frame as well as NRC bulletins and generic letters issued over the period 1988-94, instruct licensees to send conclusory statements to NRC while retaining documentation and analyses at licensees' facilities. Such information retained onsite by licensees for NRC inspection purposes is not retained by NRC in docket files, nor is it placed in NRC's Public Document Room (PDR) unless it is included in an NRC inspection report. In these