



[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC-2020-0033]

RIN 3150-AK46

### Non-Substantive Amendments to Adjudicatory Proceeding Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to revise and clarify the agency's rules of practice and procedure to reflect current Atomic Safety and Licensing Board Panel practice, Commission case law, and a decision of the Supreme Court of the United States and to enhance consistency within the NRC's regulations.

**DATES:** Submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov> and

search for Docket ID **NRC-2020-0033**. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; e-mail: Dawn.Forder@nrc.gov. For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemaking and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ian Irvin, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-287-9193; e-mail: 2020\_Part\_2\_Rulemaking@usnrc.onmicrosoft.com.

## **SUPPLEMENTARY INFORMATION:**

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#### **I. Obtaining Information and Submitting Comments**

##### **A. Obtaining Information**

Please refer to Docket ID **NRC-2020-0033** 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 <https://www.regulations.gov> and search for Docket ID **NRC-2020-0033**.

- **NRC's Agencywide Documents Access and Management System**

**(ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, 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, at 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **Attention:** The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via e-mail at [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

## B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Web Site (<https://www.regulations.gov>). Please include Docket ID **NRC-2020-0033** in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for

submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the *Federal Register*. The direct final rule will become effective on **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. However, if the NRC receives any significant adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

- 1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3) The comment causes the NRC to make a change (other than editorial) to the rule.

For a more detailed discussion of the proposed rule changes and associated analyses, see the direct final rule published in the Rules and Regulations section of this issue of the *Federal Register*.

### **III. Background**

The NRC's regulations governing the conduct of adjudicatory proceedings before the agency are contained in part 2 of title 10 of the *Code of Federal Regulations* (10 CFR), "Agency Rules of Practice and Procedure." Periodically, the NRC has amended these rules, including adopting changes in 2004 to enhance efficiency; in 2012 to promote fairness, efficiency, and openness; and in 2016 to reflect technological advances and current agency practice. Since the last update to the agency's rules of practice and procedure, the NRC has identified various provisions that should be updated to reflect technological advances and current agency practice. This proposed rule would make those updates and also clarify that any administrative law judge

designated to preside over an NRC adjudication must be appointed by the Commission consistent with the Supreme Court decision in *Lucia v. Securities and Exchange Commission* (138 S. Ct. 2044 (2018)).

#### **IV. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, 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). The NRC requests comment on the proposed rule with respect to clarity and effectiveness of the language used.

#### **V. Paperwork Reduction Act**

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

## **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

Dated October 21, 2020.

For the Nuclear Regulatory Commission.

Margaret M. Doane,  
Executive Director for Operations.

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