Proposed Rules

Federal Register
Vol. 66, No. 238
Tuesday, December 11, 2001

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 72

[Docket No. PRM–72–5]

Nuclear Energy Institute; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking: denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–72–5) submitted by the Nuclear Energy Institute (NEI). The petitioner requested that the NRC amend its regulations governing the issuance of Certificates of Compliance (CoCs) for dry cask storage of spent nuclear fuel under a general license. The petitioner requested that the NRC eliminate notice and comment rulemaking from the approval process for initial cask designs and for CoC amendments. The petitioner proposed an alternative approval process which provided for approval by orders after a period for public comment, except in the case of amendments for which a determination of no significant impacts was reached. This type of amendment could be issued as immediately effective with a post-issuance comment period.

The Commission is denying the petition for rulemaking because improvements in the approval process have significantly decreased the length of time for approval of CoC amendments, making regulatory change unnecessary; the petitioner's approval process may require the offer of an opportunity for a hearing which could eliminate any efficiency obtained by the elimination of notice and comment rulemaking; and the Commission's performance goals would be better served by retaining the present process than by adopting the process suggested by petitioner.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the NRC's rulemaking website (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or it 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.*

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–8126, e-mail *mlh1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On June 9, 2000 (65 FR 36647), the NRC published a notice of receipt of a petition for rulemaking filed by the Nuclear Energy Institute (NEI) on April 19, 2000. The petitioner supplemented the petition in an August 23, 2000 letter. The petition requests that the NRC amend its regulations at 10 CFR Part 72 governing the issuance of Certificates of Compliance (CoCs) for cask designs for dry cask storage of spent nuclear fuel for use under a general license. The petition proposes to eliminate rulemaking as the method for issuing and amending CoCs. Thus, the primary aim of the petition is to remove § 72.214, which lists approved cask designs. Under the petitioner's proposal, the NRC would continue to approve cask designs after a safety review but would issue and amend CoCs by order rather than by rulemaking.

The petitioner proposes an alternative process for providing an opportunity for public input on CoC and CoC amendment approvals. With respect to applications for a CoC for a new cask design, the NRC would publish in the **Federal Register** a notice of receipt and availability of the application. The NRC would then prepare a draft CoC and a draft Safety Evaluation Report (SER) and would notice the availability of these documents in the **Federal Register** for a 60-day comment period. The NRC would evaluate the public comments and publish a response in the **Federal Register**, together with an order granting the CoC.

Amendments to CoCs would be processed in the same manner as new CoCs except with respect to amendments where the applicant asserted that the amendment ''did not have the potential to have a significant impact on public health and safety.'' As part of the regulatory changes proposed in the petition, the NRC would amend § 72.238 to include criteria for determining whether this ''no significant impact'' standard is met in any given case. If the NRC staff agreed with the assertion of no significant impact considerations, a notice of availability of the order granting the amendment and the associated SER would be published in the **Federal Register**. A post-effectiveness comment period on the amendment and the no significant impact considerations determination would be provided. If the NRC staff determined that the amendment posed a potential significant impact, the draft CoC and SER would be published in the **Federal Register** for a 60-day comment period and the amendment would not become effective until the NRC had published a response to the comments and an order granting the amendment. The petitioner submitted examples of amendments likely to involve, and not involve, significant impact considerations that it proposed for inclusion in a regulatory guidance document. Thus, the main focus of the NEI petition is to abbreviate the CoC amendment approval process by allowing amendments which do not involve significant impact considerations to become effective upon completion of the NRC staff's safety review and prior to the receipt of any public comments.

In NEI's view, NRC's existing process for issuing and amending CoCs takes too long to complete. NEI believes that the length of the process may create a substantial impediment to the increased future deployment of dry spent fuel storage by reactor licensees and/or to

the reactor decommissioning process. In particular, the petitioner believes that NRC is in need of a regulatory process capable of dealing with a potentially large number of amendments on a more timely basis. The petitioner states that, as of the date of the petition, the rulemaking process to amend cask CoCs has taken about 24 months to complete. Use of notice and comment rulemaking procedures, as the petitioner sees it, unnecessarily expends resources on what petitioner views as a ministerial task—maintaining a list of certified casks. Replacing the present process with a simplified, streamlined procedure will have the additional benefit, NEI believes, of making the process for approving spent fuel storage casks similar to the process for approving spent fuel transportation casks.

The petitioner believes that its suggested alternative process is consistent with legal requirements. NEI takes the position that the notice and comment rulemaking used by the NRC to issue CoCs and CoC amendments is a discretionary choice of the Commission which may have been appropriate when the scope of safety issues associated with the issuance and amendment of CoCs was unknown, but is no longer necessary following more than a decade of experience with these rulemakings. Nor is a license proceeding of any kind needed for the approval of a CoC or CoC amendment, in the petitioner's view, because ''a CoC has been recognized legally as something less than a license.'' The petitioner bases this position on the court's statement in *Kelley* v. *Selin,* 42 F.3d 1501, 1518 (6th Cir. 1995), *cert. denied,* 515 U.S. 1159 (1995), that ''certification of designs is not identical to the grant of a general license. Certification is a narrower procedure that approves designs in theory while the grant of a license is a broader form of permission.'' Thus, the petitioner believes that the alternative approval process suggested in the petition would not be subject to Section 189a of the Atomic Energy Act of 1954, as amended (AEA), and would not result in opportunities for adjudicatory hearings. Because there is no legal requirement, in the petitioner's view, to use either rulemakings or adjudicatory hearings for the approval of CoCs or CoC amendments, the petitioner asserts that the NRC is free to adopt whatever approval procedures it believes are adequate for public consideration of the type of safety issues likely to arise in these proceedings.

The petitioner also believes that its proposal meets the NRC's four performance goals:

(1) Maintain safety, protect the environment and the common defense and security; (2) increase public confidence; (3) make NRC activities and decisions more effective, efficient, and realistic; and (4) reduce unnecessary regulatory burden. With respect to the first goal, the petitioner points out that its proposal will have no effect on the substantive safety standards which the CoC applicant must meet nor on NRC's safety and environmental review of an application. Further, orders are as fully enforceable as rules, so there will be no diminution of NRC's enforcement authority. With respect to the public confidence goal, the petitioner believes that public confidence will be maintained because the public will still be able to participate in a meaningful way by providing comments on all new CoCs and all amendments. The only change will be that prior comment on amendments will be appropriately reserved for those CoC amendments that have the potential for a significant safety impact. The goal of making NRC regulatory decisions more efficient will be obtained by elimination of the delay and expenditure of resources involved in notice and comment rulemaking. Finally, the goal of burden reduction will be achieved because the burdensome aspects of rulemaking would be eliminated and amendment requests which do not present significant impacts would be subject to a suitably streamlined review and approval process.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on August 23, 2000. NRC received 24 comment letters from industry, an individual, and a State government agency. All industry commenters supported the petition; the State supported the petition with reservations; and the individual opposed the petition. The NRC reviewed and considered all the comments in developing its decision on this petition.

The commenters supporting the petition did so for the same reasons as those expressed by the petitioner, primarily because the present process involving notice and comment rulemaking takes too long and involves an unnecessary expenditure of resources. One commenter observed that elimination of rulemaking would avoid the need for general licensees to seek exemptions to enable them to use a particular cask design before completion of the rulemaking process. These commenters also supported NEI's proposed alternative process. One commenter cautioned that any change to the current rulemaking process should ensure that the finality and standing of current and future CoCs as adjudicated in *Kelley* v. *Selin* be preserved. The State commenter emphasized that any criteria used to determine the significance of an amendment should be in the rule and not in a separate guidance document. Several commenters encouraged the adoption of standard technical specifications and stated that this would reduce the number of amendment requests.

One commenter opposed the petition. This commenter expressed concern that the effect of the alternative proposal would be to reduce public input and that many documents would no longer be publicly available. The commenter felt that any burden imposed by the present process was basically the fault of the industry; that if the vendors ''did their homework'' and got the proposed cask design complete before submitting it to the NRC, amendments would not be necessary. The commenter stated that the cask designs were supposed to be generic to avoid the need for site-specific approvals, yet amendments are regularly needed to accommodate minor differences in cask content unique to particular plants. The commenter objected to NRC being able to decide, prior to any public notice, whether an amendment has any significant impact or not, noting that this deprives the agency of any public insight on health and safety issues before the amendment becomes immediately effective. This commenter also believes that the present rulemaking process is not a matter of agency discretion but rather is imposed by Section 133 of the Nuclear Waste Policy Act of 1982.

Reasons for Denial

The Commission is denying the petition for rulemaking because (1) improvements in the approval process have already significantly decreased the length of time for approval of CoC amendments, making regulatory change unnecessary; (2) the petitioner's approval process may require the offer of an opportunity for a hearing, which could eliminate any efficiency obtained by generic consideration of cask design issues; and (3) the Commission's performance goals would be better served by retaining the present process than by adopting the process suggested by petitioner.

1. The length of the rulemaking process for CoC amendments has been significantly shortened since submission of the petition, obviating any need for a regulatory change.

The petitioner's primary reason for requesting an amendment of Part 72 to delete the use of notice and comment rulemaking for initial and amended CoCs is the assertion that this process is too lengthy and may interfere with efficient, expeditious use of dry cask storage. The petitioner's proposed process for approving initial cask designs—which includes public notice of the availability of the draft SER and environmental assessment (EA) for a 60-day comment period, and effectiveness of the CoC only after NRC has responded to any comments—is little different from the present process and would not produce any significant time savings. Under the petitioner's proposed process for amending CoCs, however, when the NRC agreed with an applicant's proposed finding of no significant impact, the amendment would become effective upon completion of the NRC staff's safety evaluation of the amendment. This would eliminate the time needed for the current CoC amendment rulemaking process.

At the time the petitioner submitted its petition, the petitioner stated that the rulemaking process to amend cask CoCs took about 24 months to complete. The Commission agrees that this is an excessive amount of time for very simple amendment rulemaking. However, the Commission now uses the direct final rule process for CoC amendments. In this process, the rule automatically becomes effective 75 days after its publication in the **Federal Register** unless a significant adverse comment is received within 30 days of publication. If such a comment is received, it is treated as a comment on a companion proposed rule published at the same time as the direct final rule. The NRC withdraws the direct final rule and subsequently issues a final rule responding to the comment. The NRC has now published 9 direct final rules for CoC amendments, only one of which has been withdrawn. NRC's current experience is that the rulemaking process for CoC amendments takes between 4 and 6 months rather than the 24 months which is the premise of the petition. We do not believe the current amount of time devoted to CoC amendments is inordinate given the advantages, discussed below, of using the present process.

2. Although NRC agrees with petitioner that the use of rulemaking to approve cask designs is discretionary, we are not convinced that, in the absence of rulemaking, NRC should approve CoCs for casks without an opportunity for an adjudicatory hearing.

The petitioner's suggested alternative process for the approval of cask designs and their amendment rests on two legal assumptions: (1) That the Commission has the discretion to eliminate rulemaking from the approval process; and (2) that if the Commission does eliminate rulemaking from this process it will not be necessary to provide an adjudicatory hearing in its place. As explained below, the Commission agrees with the first assumption but has reservations about the second.

In 1990, the Commission amended Part 72 to provide, in new Subpart K, a general license to enable Part 50 reactor licensees to store spent fuel in an on-site independent spent fuel storage installation (ISFSI) without the need for a site-specific NRC approval, provided storage is in casks approved by the NRC and that certain other conditions are met. (55 FR 29181; July 18, 1990.) The same rulemaking added subpart L, in which the Commission established a cask approval program. Under this regulatory regime, a CoC is issued on a finding that the applicant has satisfied NRC requirements (10 CFR 72.236; 72.238), but before the certified cask design can be used under the general license, the cask design must be added to the list of approved designs in 10 CFR 72.214 via a rulemaking.

This regulatory scheme was intended to implement two statutory provisions of the Nuclear Waste Policy Act of 1982, Sections 218(a) and 133. Section 218(a), in part, provides:

> The Secretary [of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.

Section 133, in part, provides:

> The Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section [218(a)] for use at the site of any civilian nuclear power reactor.

In its 1990 rulemaking, the Commission stated that the storage technology it was approving was storage of spent fuel in dry casks (55 FR 29182; July 18, 1990). Thus, the Commission saw its statutory duty under Section 218(a) as being fulfilled by its approval of a particular class of dry storage technology rather than by its approval of particular cask designs which were all of the same class. The Commission's statutory duty under Section 133 was fulfilled by the process it established to provide for the use of the approved technology under a general license.

The NRC agrees with petitioner that the Commission's choice to use rulemaking to list approved cask designs was a discretionary choice not mandated by statute. What must be kept in mind, however, is the process that the regulatory scheme, adopted in 1990, replaced. Before cask designs were approved by generic rulemaking for use by a general licensee, the only process available to approve the ISFSI and the cask design was the site-specific licensing proceeding, which included the opportunity for a hearing. In these site-specific proceedings, NRC approval was granted only to one licensee to use a particular cask design. If other licensees wanted to use the same design, a separate approval was needed and a separate opportunity for a hearing was provided.[1] Thus, the regulatory regime put in place in 1990 was designed to encourage and to expedite the use of dry cask storage technology because it meant that a cask design would only need to be approved once, and then it would be available to any general licensee who wished to use it and who could meet the conditions of the CoC without the need for any further site-specific approval. The new cask approval process was more efficient than the one it replaced, but its success depended upon the approval and manufacture of cask designs which could be used by a large number of reactor licensees. Instead, cask vendors have optimized cask designs for particular licensees, resulting in a need for amendment of the designs to make them more widely usable. Even with the additional time needed to amend cask designs, we believe the current process is more efficient and less time-consuming than the one it replaced.

The second assumption on which the petition is based is the expectation that it would not be necessary to provide an opportunity for an adjudicatory hearing in the proposed alternative approval process. Section 189a(1)(A) of the AEA provides, in relevant part:

> In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit * * * and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees * * * the Commission shall grant a hearing upon the

[1] Licensees may still apply for a site-specific license. If they choose to do so and reference a certified cask, issues associated with cask designs are not subject to litigation. *See* ''Clarification and Addition of Flexibility Final Rule,'' (65 FR 50606; August 21, 2000). Elimination of rulemaking from the CoC process would undermine the rationale for the Clarification rulemaking.

request of any person whose interest may be affected by the proceeding, and shall admit such person as a party to such proceeding * * *.

In *Kelley* v. *Selin*, the United States Court of Appeals for the Sixth Circuit considered a claim that the NRC had violated Section 189a by denying the petitioners' request for an adjudicatory hearing to consider issues regarding the storage of nuclear waste in VSC–24 casks at the Palisades nuclear plant. These petitioners asserted that NRC's use of generic rulemaking to add the VSC–24 cask design to the list of approved designs was insufficient because it barred opportunity to dispute issues that were site-specific in relation to the use of the VSC–24 cask at Palisades. The court upheld NRC's choice to use rulemaking to resolve *all* issues concerning the VSC–24 cask design. The court noted that ''even where an agency's enabling statute expressly requires it to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration.'' 42 F.3d at 1511 (quotations and citations omitted). This was the case here because, *inter alia*:

> The NRC's certificate of compliance for the VSC–24 casks, like the certificates of compliance for the other dry storage technologies listed in 10 C.F.R. 72.214, contains a lengthy list of conditions of system use for operation of the VSC–24. * * * This extensive list of conditions for use of the VSC–24 cask will virtually eliminate the need for site-specific consideration concerning the use of the VSC–24 cask, since the various licensees of civilian nuclear power generating facilities will be able to determine from the conditions of system use for the VSC–24 cask whether it is possible to use the cask at the site of their nuclear power generating facility.

42.Fed at 1513. Thus the court refused to use its power of judicial review to ''dictate to the agency the procedure which it must use in approving designs for containers for the dry storage of spent nuclear fuel.'' *Id. See also Siegel* v. *Atomic Energy Commission*, 400 F.2d 778, 785–786 (D.C. Cir. 1968).

At present, any obligation the NRC may have under Section 189a of the AEA to provide an opportunity for a hearing on a cask approval is satisfied by the rulemaking procedures it employs for these approvals. In the absence of these rulemaking procedures, the Commission's obligations under Section 189a would need to be revisited. As the petitioner points out, the court in *Kelley* v. *Selin*, in dicta, did characterize certification of designs as being a narrower form of permission than the grant of a license (42 F.3d at 1518), and this could conceivably support an argument that Section 189a does not apply to NRC's approval of CoCs or CoC amendments. However, whether Section 189a requires a hearing opportunity on a cask certification in the absence of rulemaking was not at issue before the court and was not decided by the court. Thus, there has been no judicial determination of this issue. The Commission concludes that there is a significant risk that the procedures offered by the petitioner, which fall short of the ingredients of a normal rulemaking,[2] would be seen as deficient.

Similarly, the court did not address, even in dicta, whether the Part 72 Subpart K general licensing scheme for ISFSIs that relies on the CoC process being accomplished by rulemaking, would be acceptable in the absence of either a rulemaking or a § 189a hearing on the CoC. Nor did the court address the specific licensing schemes for ISFSIs that also relies on the CoC rulemaking proceedings to eliminate repetitious review of cask design issues that are resolved by CoC rulemakings. *See* 10 C.F.R. 72.46(e). Consequently, if the CoC process were streamlined as NEI suggests and conducted without a rulemaking or offering a § 189a hearing, the Commission may be required to resolve cask design issues on a case-by-case basis in proceedings for specific ISFSI licenses or license amendments.

3. NRC's performance goals would be better served by retention of the present process than by adoption of petitioner's suggested process.

The Commission examined the petitioner's suggested alternative proposal in the context of NRC's four performance goals and in comparison with NRC's existing cask approval process. With respect to the first goal—maintaining safety and protecting the environment and the common defense and security—there is no difference between the two processes. The petitioner has not suggested any change in NRC's safety review of applications for CoCs or CoC amendments nor for NRC's inspection and enforcement activities.

With respect to the second goal—increasing public confidence—we think that the present process is more likely to obtain this objective. The petitioner notes that its alternative process provides the public with essentially the same opportunities for public comment; the only difference being that for amendments for which a no significant impact considerations is demonstrated, the comment period will be after, rather than prior to, the effectiveness of the amendment. However, this difference, could generate new public objections to being denied an opportunity to comment before the NRC's decision and, in particular, before to NRC's no significant impacts decision.[3] Both the public commenter who opposed the petition and the State commenter questioned petitioner's characterization of some potential amendments as being non-significant. Under the petitioner's suggested scheme, NRC would publish a notice in the **Federal Register** that would both announce its determination that the amendment had no potential for significant impacts and its immediately effective decision approving the amendment. Although, under the petitioner's scheme, the public would have a post-effectiveness opportunity to comment on both the amendment and the no significant impact considerations determination, the public may not regard this as a meaningful opportunity to comment. Under the present process, publication of an amendment as a direct final rule gives the Commission an opportunity to test its judgment that the amendment is non-controversial and will not attract any significant adverse comments. If a significant adverse comment is received, the rule is withdrawn *before it becomes effective* and the Commission proceeds with normal notice and comment rulemaking. We think this process is more likely to achieve the goal of increasing public confidence in the Commission's decisionmaking process.

With respect to the third goal of making NRC decisions more effective, efficient, and realistic, the only advantage of petitioner's alternative process over the present process would be a shortening of the time between the completion of the NRC staff's safety review of CoC amendments which meet the no significant impact considerations test and the effectiveness of the amendment. But, as described *supra,* this time interval—which petitioner asserted to be 24 months—has already been significantly shortened to 4 to 6 months through use of direct final rules and other measures taken to expedite the process, such as elimination of the

[2] For example, under § 553(d) of the Administrative Procedures Act, notice of a final rule must be given at least 30 days prior to its effective date. The petitioner contemplates that an order would be effective immediately.

[3] Petitioner's suggested process is similar to the process the Commission uses for considering Part 50 license amendments. In that process, the applicant submits a no significant hazards consideration analysis and the Commission publishes in the **Federal Register** a proposed determination that no significant hazards consideration is involved and allows a 30-day comment period on this determination. Normally, the amendment is not granted until the conclusion of this comment period. See 10 CFR 50.91(a).

need for a rulemaking plan and issuance of the rule by the Executive Director for Operations. Moreover, the NRC staff continues to find ways to expedite the internal approval process as additional experience is gained. Under the alternative process suggested by the petitioner, the staff's technical review would take longer than it currently takes because the staff would be required to conduct some activities currently conducted under rulemaking and some new activities that they do not perform under the current process. An environmental assessment would need to be prepared for each new CoC and each CoC amendment (this is currently performed during rulemaking). As part of this process, the staff would need to consult with the states. If appropriate, a Finding of No Significant Impact (associated with the environmental review) would need to be prepared and published in the **Federal Register**. The NRC staff would need to prepare, and have published in the **Federal Register**, the no significant impact consideration finding (a new action). In addition, an order granting the CoC (new action) would need to be prepared and issued. These activities would increase the staff effort and review time necessary for approval of a CoC amendment. Moreover, whatever time savings petitioner's process might achieve would be offset if it should prove necessary to resolve cask design issues on a case-by-case basis in ISFSI proceedings. Unquestionably, a case-by-case consideration, rather than a generic review, would significantly increase the time and resources necessary for finally resolving cask design issues. Any uncertainty in the finality of the NRC's decision on cask design issues could postpone the loading of casks, because one outcome of any case-by-case consideration could be to overturn the NRC decision to approve a cask.

Finally, with respect to the fourth goal of reducing unnecessary regulatory burden, the petitioner asserts that its alternative process achieves this goal because ''the new process removes the burdensome aspects of rulemaking which are unnecessary because they do not add to the quality of the regulatory decision'' and ''the new process identifies the CoC amendment requests which do not present significant potential impacts and subjects those amendment requests to a suitably streamlined review and approval process.'' The NRC notes that the petitioner's suggested process for considering initial CoCs and amendments which do involve significant impacts—a process that involves a 60-day comment period and no final NRC action until NRC has addressed the comments—is not significantly different from the present process and would not provide significant burden reduction for either the NRC staff or the industry. There could be a slight increase in burden for the staff because petitioner's process calls for publication in the **Federal Register** of a Notice of Receipt and Availability of the Application, a step not part of the current process. The petitioner's process for CoC amendments would require the applicant to submit a no significant impacts determination consideration along with the application. This would actually place an additional burden on the applicant and on the NRC staff assigned to reviewing the determination even though the extra burden might produce the benefit of an immediately effective amendment. Staff effort would also continue to be expended on preparation of an environmental assessment and the necessary **Federal Register** notices (currently part of the rulemaking process). The staff would also have the added burden of preparing an order to issue the CoC amendment. In short, there would be little, if any, burden reduction stemming from petitioner's alternative process. Moreover, if it should prove necessary to offer an opportunity for a hearing, a hearing request would also result in an increased expenditure of resources by both staff and the industry.

In conclusion, for the reasons explained above, we believe that NRC's performance goals are better served by retention of the current process.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 5th day of December, 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 01–30611 Filed 12–10–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–028–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Oklahoma proposes revisions to its rules concerning employment and financial interests of state employees and members of advisory boards and commissions, and remining and reclamation of previously mined and certain inadequately reclaimed lands. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations. Oklahoma also intends to correct some cross references and typographical and grammatical errors.

This document gives the times and locations that the Oklahoma program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.s.t., January 10, 2002 . If requested, we will hold a public hearing on the amendment on January 7, 2002. We will accept requests to speak at the hearing until 4:00 p.m., c.s.t. on December 26, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Oklahoma program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa