

Nuclear Regulatory Commission

Pt. 2

(b) Any person who uses the official seal in a manner other than as permitted by this section shall be subject to the provisions of 18 U.S.C. 1017, which provides penalties for the fraudulent or wrongful use of an official seal, and to other provisions of law as applicable.

§ 1.55 Establishment of official NRC flag.

The official flag is based on the design of the NRC seal. It is 50 inches by 66 inches in size with a 38-inch diameter seal incorporated in the center of a dark blue field with a gold fringe.

§ 1.57 Use of NRC flag.

(a) The use of the flag is restricted to the following:

- (1) On or in front of NRC installations;
- (2) At NRC ceremonies;
- (3) At conferences involving official NRC participation (including permanent display in NRC conference rooms);
- (4) At Governmental or public appearances of NRC executives;
- (5) In private offices of senior officials; or
- (6) As the Secretary of the Commission otherwise authorizes.

(b) The NRC flag must only be displayed together with the U.S. flag.

When they are both displayed on a speaker's platform, the U.S. flag must occupy the position of honor and be placed at the speaker's right as he or she faces the audience, and the NRC flag must be placed at the speaker's left.

§ 1.59 Report of violations.

In order to ensure adherence to the authorized uses of the NRC seal and flag as provided in this subpart, a report of each suspected violation of this subpart, or any questionable use of the NRC seal or flag, should be submitted to the Secretary of the Commission.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

Sec.

- 2.1 Scope.
- 2.2 Subparts.

- 2.3 Resolution of conflict.
- 2.4 Definitions.
- 2.8 Information collection requirements: OMB approval.

Subpart A—Procedure for Issuance, Amendment, Transfer, or Renewal of a License

- 2.100 Scope of subpart.
- 2.101 Filing of application.
- 2.102 Administrative review of application.
- 2.103 Action on applications for byproduct, source, special nuclear material, facility and operator licenses.

HEARING ON APPLICATION—HOW INITIATED

- 2.104 Notice of hearing.
- 2.105 Notice of proposed action.
- 2.106 Notice of issuance.
- 2.107 Withdrawal of application.
- 2.108 Denial of application for failure to supply information.
- 2.109 Effect of timely renewal application.
- 2.110 Filing and administrative action on submittals for design review or early review of site suitability issues.
- 2.111 Prohibition of sex discrimination.

Subpart B—Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties

- 2.200 Scope of subpart.
- 2.201 Notice of violation.
- 2.202 Orders.
- 2.203 Settlement and compromise.
- 2.204 Demand for information.
- 2.205 Civil penalties.
- 2.206 Requests for action under this subpart.

Subpart C—Rules of General Applicability: Hearing Requests, Petitions To Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings

- 2.300 Scope of subpart C.
- 2.301 Exceptions.
- 2.302 Filing of documents.
- 2.303 Docket.
- 2.304 Formal requirements for documents; acceptance for filing.
- 2.305 Service of papers, methods, proof.
- 2.306 Computation of time.
- 2.307 Extension and reduction of time limits.
- 2.308 Treatment of requests for hearing or petitions for leave to intervene by the Secretary.
- 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

Pt. 2

10 CFR Ch. I (1–1–07 Edition)

- 2.310 Selection of hearing procedures.
- 2.311 Interlocutory review of rulings on requests for hearings/petitions to intervene and selection of hearing procedures.
- 2.312 Notice of hearing.
- 2.313 Designation of presiding officer, disqualification, unavailability, and substitution.
- 2.314 Appearance and practice before the Commission in adjudicatory proceedings.
- 2.315 Participation by a person not a party.
- 2.316 Consolidation of parties.
- 2.317 Separate hearings; consolidation of proceedings.
- 2.318 Commencement and termination of jurisdiction of presiding officer.
- 2.319 Power of the presiding officer.
- 2.320 Default.
- 2.321 Atomic Safety and Licensing Boards.
- 2.322 Special assistants to the presiding officer.
- 2.323 Motions.
- 2.324 Order of procedure.
- 2.325 Burden of proof.
- 2.326 Motions to reopen.
- 2.327 Official recording; transcript.
- 2.328 Hearings to be public.
- 2.329 Prehearing conference.
- 2.330 Stipulations.
- 2.331 Oral argument before the presiding officer.
- 2.332 General case scheduling and management.
- 2.333 Authority of the presiding officer to regulate procedure in a hearing.
- 2.334 Implementing hearing schedule for proceeding.
- 2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.
- 2.336 General discovery.
- 2.337 Evidence at a hearing.
- 2.338 Settlement of issues; alternative dispute resolution.
- 2.339 Expedited decisionmaking procedure.
- 2.340 Initial decision in contested proceedings on applications for facility operating licenses; immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.
- 2.341 Review of decisions and actions of a presiding officer.
- 2.342 Stays of decisions.
- 2.343 Oral argument.
- 2.344 Final decision.
- 2.345 Petition for reconsideration.
- 2.346 Authority of the Secretary.
- 2.347 Ex parte communications.
- 2.348 Separation of functions.

- 2.390 Public inspections, exemptions, requests for withholding.

Subpart D—Additional Procedures Applicable to Proceedings for the Issuance of Licenses To Construct or Operate Nuclear Power Plants of Duplicate Design at Multiple Sites

- 2.400 Scope of subpart.
- 2.401 Notice of hearing on applications pursuant to appendix N of part 52 for construction permits.
- 2.402 Separate hearings on separate issues; consolidation of proceedings.
- 2.403 Notice of proposed action on applications for operating licenses pursuant to appendix N of part 52.
- 2.404 Hearings on applications for operating licenses pursuant to appendix N of part 52.
- 2.405 Initial decisions in consolidated hearings.
- 2.406 Finality of decisions on separate issues.
- 2.407 Applicability of other sections.

Subpart E—Additional Procedures Applicable to Proceedings for the Issuance of Licenses To Manufacture Nuclear Power Reactors To Be Operated at Sites Not Identified in the License Application and Related Licensing Proceedings

- 2.500 Scope of subpart.
- 2.501 Notice of hearing on application pursuant to appendix M of part 52 for a license to manufacture nuclear power reactors.
- 2.502 Notice of hearing on application for a permit to construct a nuclear power reactor manufactured pursuant to a Commission license issued pursuant to appendix M of part 52 of this chapter at the site at which the reactor is to be operated.
- 2.503 Finality of decision on separate issues.
- 2.504 Applicability of other sections.

Subpart F—Additional Procedures Applicable to Early Partial Decisions on Site Suitability Issues in Connection With an Application for a Permit To Construct Certain Utilization Facilities

- 2.600 Scope of subpart.
- 2.601 Applicability of other sections.
- 2.602 Filing fees.
- 2.603 Acceptance and docketing of application for early review of site suitability issues.
- 2.604 Notice of hearing on application for early review of site suitability issues.
- 2.605 Additional considerations.
- 2.606 Partial decisions on site suitability issues.

Nuclear Regulatory Commission

Pt. 2

Subpart G—Rules for Formal Adjudications

- 2.700 Scope of subpart G.
- 2.701 Exceptions.
- 2.702 Subpoenas.
- 2.703 Examination by experts.
- 2.704 Discovery—required disclosures.
- 2.705 Discovery—additional methods.
- 2.706 Depositions upon oral examination and written interrogatories; interrogatories to parties.
- 2.707 Production of documents and things; entry upon land for inspection and other purposes.
- 2.708 Admissions.
- 2.709 Discovery against NRC staff.
- 2.710 Motions for summary disposition.
- 2.711 Evidence.
- 2.712 Proposed findings and conclusions.
- 2.713 Initial decision and its effect.

Subpart H—Rulemaking

- 2.800 Scope of rulemaking.
- 2.801 Initiation of rulemaking.
- 2.802 Petition for rulemaking.
- 2.803 Determination of petition.
- 2.804 Notice of proposed rulemaking.
- 2.805 Participation by interested persons.
- 2.806 Commission action.
- 2.807 Effective date.
- 2.808 Authority of the Secretary to rule on procedural matters.
- 2.809 Participation by the Advisory Committee on Reactor Safeguards.
- 2.810 NRC size standards.

Subpart I—Special Procedures Applicable to Adjudicatory Proceedings Involving Restricted Data and/or National Security Information

- 2.900 Purpose.
- 2.901 Scope of subpart I.
- 2.902 Definitions.
- 2.903 Protection of restricted data and national security information.
- 2.904 Classification assistance.
- 2.905 Access to restricted data and national security information for parties; security clearances.
- 2.906 Obligation of parties to avoid introduction of restricted data or national security information.
- 2.907 Notice of intent to introduce restricted data or national security information.
- 2.908 Contents of notice of intent to introduce restricted data or other national security information.
- 2.909 Rearrangement or suspension of proceedings.
- 2.910 Unclassified statements required.
- 2.911 Admissibility of restricted data or other national security information.
- 2.912 Weight to be attached to classified evidence.

- 2.913 Review of Restricted Data or other National Security Information received in evidence.

Subpart J—Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

- 2.1000 Scope of subpart J.
- 2.1001 Definitions.
- 2.1002 [Reserved]
- 2.1003 Availability of material.
- 2.1004 Amendments and additions.
- 2.1005 Exclusions.
- 2.1006 Privilege.
- 2.1007 Access.
- 2.1008 [Reserved]
- 2.1009 Procedures.
- 2.1010 Pre-License Application Presiding Officer.
- 2.1011 Management of electronic information.
- 2.1012 Compliance.
- 2.1013 Use of the electronic docket during the proceeding.
- 2.1015 Appeals.
- 2.1017 Computation of time.
- 2.1018 Discovery.
- 2.1019 Depositions.
- 2.1020 Entry upon land for inspection.
- 2.1021 First prehearing conference.
- 2.1022 Second prehearing conference.
- 2.1023 Immediate effectiveness.
- 2.1025 Authority of the Presiding Officer to dispose of certain issues on the pleadings.
- 2.1026 Schedule.
- 2.1027 Sua sponte.

Subpart K—Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors

- 2.1101 Purpose.
- 2.1103 Scope of subpart K.
- 2.1105 Definitions.
- 2.1107 Notice of proposed action.
- 2.1109 Requests for oral argument.
- 2.1113 Oral argument.
- 2.1115 Designation of issues for adjudicatory hearing.
- 2.1117 Burden of proof.
- 2.1119 Applicability of other sections.

Subpart L—Informal Hearing Procedures for NRC Adjudications

- 2.1200 Scope of subpart L.
- 2.1201 Definitions.
- 2.1202 Authority and role of NRC staff.
- 2.1203 Hearing file; prohibition on discovery.
- 2.1204 Motions and requests.
- 2.1205 Summary disposition.
- 2.1206 Informal hearings.

- 2.1207 Process and schedule for submissions and presentations in an oral hearing.
- 2.1208 Process and schedule for a hearing consisting of written presentations.
- 2.1209 Findings of fact and conclusions of law.
- 2.1210 Initial decision and its effect.
- 2.1211 Immediate effectiveness of initial decision directing issuance or amendment of licenses under part 61 of this chapter.
- 2.1212 Petitions for Commission review of initial decisions.
- 2.1213 Application for a stay.

Subpart M—Procedures for Hearings on License Transfer Applications

- 2.1300 Scope of subpart M.
- 2.1301 Public notice of receipt of a license transfer application.
- 2.1302 Notice of withdrawal of an application.
- 2.1303 Availability of documents.
- 2.1304 Hearing procedures.
- 2.1305 Written comments.
- 2.1308 Oral hearings.
- 2.1309 Notice of oral hearing.
- 2.1310 Notice of hearing consisting of written comments.
- 2.1311 Conditions in a notice or order.
- 2.1315 Generic determination regarding license amendments to reflect transfers.
- 2.1316 Authority and role of NRC staff.
- 2.1319 Presiding Officer.
- 2.1320 Responsibility and power of the Presiding Officer in an oral hearing.
- 2.1321 Participation and schedule for submissions in a hearing consisting of written comments.
- 2.1322 Participation and schedule for submissions in an oral hearing.
- 2.1323 Presentation of testimony in an oral hearing.
- 2.1324 Appearance in an oral hearing.
- 2.1325 Motions and requests.
- 2.1327 Application for a stay of the effectiveness of NRC staff action on license transfer.
- 2.1331 Commission action.

Subpart N—Expedited Proceedings with Oral Hearings

- 2.1400 Purpose and scope of subpart N.
- 2.1401 Definitions.
- 2.1402 General procedures and limitations; requests for other procedures.
- 2.1403 Authority and role of the NRC staff.
- 2.1404 Prehearing conference.
- 2.1405 Hearing.
- 2.1406 Initial decision—issuance and effectiveness.
- 2.1407 Appeal and Commission review of initial decision.

Subpart O—Legislative Hearings

- 2.1500 Purpose and scope.

- 2.1501 Definitions.
- 2.1502 Commission decision to hold legislative hearing.
- 2.1503 Authority of presiding officer.
- 2.1504 Request to participate in legislative hearing.
- 2.1505 Role of the NRC staff.
- 2.1506 Written statements and submission of information.
- 2.1507 Oral hearing.
- 2.1508 Recommendation of presiding officer.
- 2.1509 Ex parte communications and separation of functions.

APPENDIX A TO PART 2 [RESERVED]

APPENDIX B TO PART 2—MODEL MILESTONES TO BE USED BY A PRESIDING OFFICER AS A GUIDELINE IN DEVELOPING A HEARING SCHEDULE FOR THE CONDUCT OF AN ADJUDICATORY PROCEEDING IN ACCORDANCE WITH 10 CFR 2.332.

APPENDIX C TO PART 2 [RESERVED]

APPENDIX D TO PART 2—SCHEDULE FOR THE PROCEEDING ON CONSIDERATION OF CONSTRUCTION AUTHORIZATION FOR A HIGH-LEVEL WASTE GEOLOGIC REPOSITORY.

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239).

Sections 2.200–2.206 also issued under secs. 161b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (l), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104-134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K

Nuclear Regulatory Commission

§ 2.4

also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154).

Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

SOURCE: 27 FR 377, Jan. 13, 1962, unless otherwise noted.

§ 2.1 Scope.

This part governs the conduct of all proceedings, other than export and import licensing proceedings described in part 110, under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, for—

(a) Granting, suspending, revoking, amending, or taking other action with respect to any license, construction permit, or application to transfer a license;

(b) Issuing orders and demands for information to persons subject to the Commission's jurisdiction, including licensees and persons not licensed by the Commission;

(c) Imposing civil penalties under section 234 of the Act; and

(d) Public rulemaking.

[56 FR 40684, Aug. 15, 1991]

§ 2.2 Subparts.

Each subpart other than subpart C of this part sets forth special rules applicable to the type of proceeding described in the first section of that subpart. Subpart C sets forth general rules applicable to all types of proceedings except rulemaking, and should be read in conjunction with the subpart governing a particular proceeding. Subpart I of this part sets forth special procedures to be followed in proceedings in order to safeguard and prevent disclosure of Restricted Data.

[69 FR 2233, Jan. 14, 2004]

§ 2.3 Resolution of conflict.

(a) In any conflict between a general rule in subpart C of this part and a special rule in another subpart or other part of this chapter applicable to a particular type of proceeding, the special rule governs.

(b) Unless otherwise specifically referenced, the procedures in this part do

not apply to hearings in 10 CFR parts 4, 9, 10, 11, 12, 13, 15, 16, and subparts H and I of 10 CFR part 110.

[69 FR 2233, Jan. 14, 2004]

§ 2.4 Definitions.

As used in this part,

ACRS means the Advisory Committee on Reactor Safeguards established by the Act.

Act means the Atomic Energy Act of 1954, as amended (68 Stat. 919).

Adjudication means the process for the formulation of an order for the final disposition of the whole or any part of any proceeding subject to this part, other than rule making.

Administrative Law Judge means an individual appointed pursuant to section 11 of the Administrative Procedure Act to conduct proceedings subject to this part.

Commission means the Commission of five members or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974 (88 Stat. 1242), or any officer to whom has been delegated authority pursuant to section 161n of the Act.

Commission adjudicatory employee means—

(1) The Commissioners and members of their personal staffs;

(2) The employees of the Office of Commission Appellate Adjudication;

(3) The members of the Atomic Safety and Licensing Board Panel and staff assistants to the Panel;

(4) A presiding officer appointed under § 2.313, and staff assistants to a presiding officer;

(5) Special assistants (as defined in § 2.322);

(6) The General Counsel, the Solicitor, the Associate General Counsel for Licensing and Regulation, and employees of the Office of the General Counsel under the supervision of the Solicitor;

(7) The Secretary and employees of the Office of the Secretary; and

(8) Any other Commission officer or employee who is appointed by the Commission, the Secretary, or the General Counsel to participate or advise in the Commission's consideration of an initial or final decision in a proceeding.

Any other Commission officer or employee who, as permitted by §2.348, participates or advises in the Commission's consideration of an initial or final decision in a proceeding must be appointed as a Commission adjudicatory employee under this paragraph and the parties to the proceeding must be given written notice of the appointment.

Contested proceeding means (1) a proceeding in which there is a controversy between the staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

Department means the Department of Energy established by the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565 42 U.S.C. 7101 *et seq.*) to the extent that the Department, or its duly authorized representatives, exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104 (b), (c) and (d) of the Energy Reorganization Act of 1974 (Pub. L. 93–438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the Secretary of Energy pursuant to section 301(a) of the Department of Energy Organization Act (Pub. L. 95–91, 91 Stat. 565 at 577–578, 42 U.S.C. 7151).

Electric utility means any entity that generates or distributes electricity and which recovers the costs of this electricity, either directly or indirectly through rates established by the entity itself or by a separate regulatory authority. Investor-owned utilities including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, are included within the meaning of “electric utility.”

Ex parte communication means an oral or written communication not on the public record with respect to which

reasonable prior notice to all parties is not given.

Facility means a production facility or a utilization facility as defined in §50.2 of this chapter.

Investigative or litigating function means—

(1) Personal participation in planning, conducting, or supervising an investigation; or

(2) Personal participation in planning, developing, or presenting, or in supervising the planning, development or presentation of testimony, argument, or strategy in a proceeding.

License means a license, including a renewed license, or construction permit issued by the Commission.

Licensee means a person who is authorized to conduct activities under a license, including a renewed license, or construction permit issued by the Commission.

NRC personnel means:

(1) NRC employees;

(2) For the purpose of §§2.336, 2.702, 2.709 and 2.1018 only, persons acting in the capacity of consultants to the Commission, regardless of the form of the contractual arrangements under which such persons act as consultants to the Commission; and

(3) Members of advisory boards, committees, and panels of the NRC; members of boards designated by the Commission to preside at adjudicatory proceedings; and officers or employees of Government agencies, including military personnel, assigned to duty at the NRC.

NRC Public Document Room means the facility at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where NRC makes computer terminals available to access the Publicly Available Records System (PARS) component of ADAMS on the NRC Web site, <http://www.nrc.gov>, and where copies of publicly available documents can be viewed or ordered for a fee as set forth in §9.35 of this chapter.

Nuclear Regulatory Commission

§2.101

The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (301-415-4737 or 800-397-4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), facsimile (301-415-3548), or letter (NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852-2738).

NRC records and documents means any book, paper, map, photograph, brochure, punch card, magnetic tape, paper tape, sound recording, pamphlet, slide, motion picture, or other documentary material regardless of form or characteristics, made by, in the possession of, or under the control of the NRC pursuant to Federal law or in connection with the transaction of public business as evidence of NRC organization, functions, policies, decisions, procedures, operations, programs or other activities. "NRC records and documents" do not include objects or articles such as structures, furniture, tangible exhibits or models, or vehicles and equipment.

NRC Web site, <http://www.nrc.gov>, is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

Presiding officer means the Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or other person designated in accordance with the provisions of this part, presiding over the conduct of a hearing conducted under the provisions of this part.

Public Document Room means the place at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852-2738, at which public records of the Commission will ordinarily be made available for inspection.

Secretary means the Secretary to the Commission.

Except as redefined in this section, words and phrases which are defined in the Act and in this chapter have the same meaning when used in this part.

[27 FR 377, Jan. 13, 1962]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §2.4, see the List of Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§2.8 Information collection requirements: OMB approval.

This part contains no information collection requirements and therefore is not subject to requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

[61 FR 43408, Aug. 22, 1996]

Subpart A—Procedure for Issuance, Amendment, Transfer, or Renewal of a License

§2.100 Scope of subpart.

This subpart prescribes the procedures for issuance of a license, amendment of a license at the request of the licensee, and transfer and renewal of a license.

[69 FR 2234, Jan. 14, 2004]

§2.101 Filing of application.

(a)(1) An application for a license, a license transfer, or an amendment to a license shall be filed with the Director of the Office of Nuclear Reactor Regulation or Director of the Office of Nuclear Material Safety and Safeguards,

as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the NRC staff prior to the filing of an application.

(2) Each application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determination as to whether an application for a construction permit or operating license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered application. A copy of the tendered application will be available for public inspection at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room. Generally, the determination on acceptability for docketing will be made within a period of thirty (30) days. However, in selected construction permit applications, the Commission may decide to determine acceptability on the basis of the technical adequacy of the application as well as its completeness. In these cases, the Commission, pursuant to §2.104(a), will direct that the notice of hearing be issued as soon as practicable after the application has been tendered, and the determination of acceptability will be made generally within a period of sixty (60) days. For docketing and other requirements for applications pursuant to part 61 of this chapter, see paragraph (g) of this section.

(3) If the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, determines that a tendered application for a construction permit or operating license for a production or utilization facility, and/or any environmental report required pursuant to subpart A of part 51 of this chapter, or part thereof as provided in paragraphs (a)(5) or (a-1) of this section are complete and acceptable for docketing, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination. With respect to the tendered application and/or environmental report or part thereof that is acceptable

for docketing, the applicant will be requested to:

(i) Submit to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, such additional copies as the regulations in part 50 and subpart A of part 51 require;

(ii) Serve a copy on the chief executive of the municipality in which the facility is to be located or, if the facility is not to be located within a municipality, on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information: Docket number of the application, a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and email address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to such documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph, the applicant should not make public distribution of those parts of the application subject to §2.390(d). The applicant shall submit to the Director of Nuclear Reactor Regulation an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served; and

(iii) Make direct distribution of additional copies to Federal, State, and local officials in accordance with the

requirements of this chapter and written instructions furnished to the applicant by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate. Such written instructions will be furnished as soon as practicable after all or any part of the application, or environmental report, is tendered. The copies submitted to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, and distributed by the applicant shall be completely assembled documents, identified by docket number. Subsequently distributed amendments to applications, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages.

(4) The tendered application for a construction permit or operating license for a production or utilization facility will be formally docketed upon receipt by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, of the required additional copies. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addresses. The date of docketing shall be the date when the required copies are received by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate. Within ten (10) days after docketing the applicant shall submit to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, an affidavit that distribution of the additional copies to Federal, State, and local officials has been completed in accordance with requirements of this chapter and written instructions furnished to the applicant by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate. Amendments to the application and environmental report shall be filed and distributed and an affidavit shall be furnished to the Director of Nuclear Reactor Regulation or Director of Nu-

clear Material Safety and Safeguards, as appropriate, in the same manner as for the initial application and environmental report. If it is determined that all or any part of the tendered application and/or environmental report is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination, and the respects in which the document is deficient.

(5) An applicant for a construction permit for a production or utilization facility which is subject to §51.20(b) of this chapter, and is of the type specified in §50.21(b)(2) or (3) or §50.22 of this chapter or is a testing facility may submit the information required of applicants by part 50 of the chapter in two parts. One part shall be accompanied by the information required by §50.30(f) of this chapter, another part shall include any information required by §50.34(a) and, if applicable, §50.34a of this chapter. One part may precede or follow other parts by no longer than six (6) months. If it is determined that either of the parts as described above is incomplete and not acceptable for processing, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of thirty (30) days. Whichever part is filed first shall also include the fee required by §§50.30(e) and 170.21 of this chapter and the information required by §§50.33, 50.34(a)(1) and 50.37 of this chapter. The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will accept for docketing an application for a construction permit for a production or utilization facility which is subject to §51.20(b) of this chapter, and is of the type specified in §50.21(b)(2) or (3) or §50.22 of this chapter or is a testing facility where one part of the application as described above is complete and conforms to the requirements of part 50 of this chapter. The additional parts will be docketed upon a determination by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and

§2.101

10 CFR Ch. I (1-1-07 Edition)

Safeguards, as appropriate, that it is complete.

(a-1) *Early consideration of site suitability issues.* An applicant for a construction permit for a utilization facility which is subject to §51.20(b) of this chapter and is of the type specified in §50.21(b)(2) or (3) or §50.22 of this chapter or is a testing facility, may request that the Commission conduct an early review and hearing and render an early partial decision in accordance with subpart F on issues of site suitability within the purview of the applicable provisions of parts 50, 51 and 100 of this chapter. In such cases, the applicant for the construction permit may submit the information required of applicants by the provisions of this chapter in three parts:

(1) Part one shall include or be accompanied by any information required by §§50.34(a)(1) and 50.30(f) of this chapter which relates to the issue(s) of site suitability for which an early review, hearing and partial decision are sought, except that information with respect to operation of the facility at the projected initial power level need not be supplied, and shall include the information required by §§50.33 (a) through (e) and 50.37 of this chapter. The information submitted shall also include: (i) Proposed findings on the issues of site suitability on which the applicant has requested review and a statement of the bases or the reasons for those findings, (ii) a range of postulated facility design and operation parameters that is sufficient to enable the Commission to perform the requested review of site suitability issues under the applicable provisions of parts 50, 51 and 100, and (iii) information concerning the applicant's site selection process and long-range plans for ultimate development of the site required by §2.603(b)(1).

(2) Part two shall include or be accompanied by the remaining information required by §§50.30(f), 50.33 and 50.34(a)(1) of this chapter.

(3) Part three shall include the remaining information required by §§50.34a and (in the case of a nuclear power reactor) 50.34(a) of this chapter.

(4) The information required for part two or part three shall be submitted during the period the partial decision

on part one is effective. Submittal of the information required for part three may precede by no more than six months or follow by no more than six months the submittal of the information required for part two.

(b) After the application has been docketed each applicant for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee except applicants under part 61 of this chapter, who must comply with paragraph (g) of this section, shall serve a copy of the application and environmental report, as appropriate, on the chief executive of the municipality in which the activity is to be conducted or, if the activity is not to be conducted within a municipality on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information: Docket number of the application; a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and email address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to such documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph the applicant should not make public distribution of those parts of the application subject to §2.390(d). The applicant shall submit to the Director of Nuclear Material Safety and Safeguards an affidavit that service of the notice of availability of the application or environmental report has been completed

Nuclear Regulatory Commission

§2.101

along with a list of names and addresses of those executives upon whom the notice was served.

(c) Upon receipt and acceptance for docketing of the required portions of the application dealing with radiological health and safety and environmental matters, notice of receipt will be published in the FEDERAL REGISTER including an appropriate notice of hearing.

(d) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will give notice of the docketing of the public health and safety, common defense and security, and environmental parts of an application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, except that for applications pursuant to part 61 of this chapter paragraph (g) of this section applies, to the Governor or other appropriate official of the State in which the facility is to be located or the activity is to be conducted and will cause to be published in the FEDERAL REGISTER a notice of docketing of the application which states the purpose of the application and specifies the location at which the proposed activity would be conducted.

(e)(1) Each application for construction authorization for a HLW repository at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, and each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, and any environmental impact statement required in connection therewith pursuant to subpart A of part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

(2) To allow a determination as to whether the application is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commission's Public Document Room. Twenty copies shall be filed to enable this determination to be made.

(3) If the Director of Nuclear Material Safety and Safeguards determines

that the tendered document is complete and acceptable for docketing, a docket number will be assigned and the applicant will be notified of the determination. If it is determined that all or any part of the tendered document is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination and the respects in which the document is deficient.

(4) [Reserved]

(5) If a tendered document is acceptable for docketing, the applicant will be requested to submit to the Director of Nuclear Material Safety and Safeguards such additional copies of the application and environmental impact statement as the regulations in part 60 or 63 and subpart A of part 51 of this chapter require; serve a copy of such application and environmental impact statement on the chief executive of the municipality in which the geologic repository operations area is to be located, or if the geologic repository operations area is not to be located within a municipality, on the chief executive of the county (or to the Tribal organization, if it is to be located within an Indian reservation); and make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter, and written instructions from the Director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments to the application, however, may include revised pages to previous submittals and, in such cases, the recipients are responsible for inserting the revised pages.

(6) The tendered document will be formally docketed upon receipt by the Director of Nuclear Material Safety and Safeguards of the required additional copies. The date of docketing shall be the date when the required copies are received by the Director of Nuclear Material Safety and Safeguards. Within ten (10) days after docketing, the applicant shall submit to the Director of Nuclear Material Safety and Safeguards a written statement that distribution of the additional copies to Federal, State, Indian Tribe, and

§2.101

10 CFR Ch. I (1-1-07 Edition)

local officials has been completed in accordance with requirements of this chapter and written instructions furnished to the applicant by the Director of Nuclear Material Safety and Safeguards. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addressees.

(7) Amendments to the application and supplements to the environmental impact statement shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental impact statement.

(8) The Director of Nuclear Material Safety and Safeguards will cause to be published in the FEDERAL REGISTER a notice of docketing which identifies the State and location at which the proposed geologic repository operations area would be located and will give notice of docketing to the governor of that State. The notice of docketing will state that the Commission finds that a hearing is required in the public interest, prior to issuance of a construction authorization, and will recite the matters specified in §2.104(a) of this part.

(f) Each application for a license to receive radioactive waste from other persons for disposal under part 61 of this chapter and the accompanying environmental report shall be processed in accordance with the provisions of this paragraph.

(1) To allow a determination as to whether the application or environmental report is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commission's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852-2738. One original and two copies shall be filed to enable this determination to be made.

(i) Upon receipt of a tendered application, the Commission will publish in the FEDERAL REGISTER notice of the filed application and will notify the governors, legislatures and other ap-

propriate State, county, and municipal officials and tribal governing bodies of the States and areas containing or potentially affected by the activities at the proposed site and the alternative sites. The Commission will inform these officials that the Commission staff will be available for consultation pursuant to §61.71 of this chapter. The FEDERAL REGISTER notice will note the opportunity for interested persons to submit views and comments on the tendered application for consideration by the Commission and applicant. The Commission will also notify the U.S. Bureau of Indian Affairs when tribal governing bodies are notified.

(ii) The Commission will also post a public notice in a newspaper or newspapers of general circulation in the affected States and areas summarizing information contained in the applicant's tendered application and noting the opportunity to submit views and comments.

(iii) When the Director of Nuclear Material Safety and Safeguards determines that the tendered document is complete and acceptable for docketing, a docket number will be assigned and the applicant will be notified of the determination. If it is determined that all or any part of the tendered document is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination and the aspects in which the document is deficient.

(2)(i) With respect to any tendered document that is acceptable for docketing, the applicant will be requested to:

(A) Submit to the Director of Nuclear Material Safety and Safeguards such additional copies as required by the regulations in part 61 and subpart A of part 51 of this chapter;

(B) Serve a copy on the chief executive of the municipality in which the waste is to be disposed of or, if the waste is not to be disposed of within a municipality, serve a copy on the chief executive of the county in which the waste is to be disposed of;

(C) Make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter

Nuclear Regulatory Commission

§2.102

and written instructions from the Director of Nuclear Material Safety and Safeguards; and

(D) Serve a notice of availability of the application and environmental report on the chief executives or governing bodies of the municipalities or counties which have been identified in the application and environmental report as the location of all or part of the alternative sites if copies are not distributed under paragraph (g)(2)(i)(C) of this section to the executives or bodies.

(ii) All distributed copies shall be completely assembled documents identified by docket number. However, subsequently distributed amendments may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages. In complying with the requirements of paragraph (g) of this section the applicant may not make public distribution of those parts of the application subject to §2.390(d).

(3) The tendered document will be formally docketed upon receipt by the Director of Nuclear Material Safety and Safeguards of the required additional copies. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addressees. The date of docketing shall be the date when the required copies are received by the Director of Nuclear Material Safety and Safeguards. Within ten (10) days after docketing, the applicant shall submit to the Director of Nuclear Material Safety and Safeguards a written statement that distribution of the additional copies to Federal, State, Indian Tribe, and local officials has been completed in accordance with requirements of this section and written instructions furnished to the applicant by the Director of Nuclear Material Safety and Safeguards.

(4) Amendments to the application and environmental report shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental report.

(5) The Director of Nuclear Material Safety and Safeguards will cause to be

published in the FEDERAL REGISTER a notice of docketing which identifies the State and location of the proposed waste disposal facility and will give notice of docketing to the governor of that State and other officials listed in paragraph (g)(3) of this section and, in a reasonable period thereafter, publish in the FEDERAL REGISTER a notice pursuant to §2.105 offering opportunity to request a hearing to the applicant and other affected persons.

[41 FR 15833, Apr. 15, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §2.101, see the List of Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§2.102 Administrative review of application.

(a) During review of an application by the staff, an applicant may be required to supply additional information. The staff may request any one party to the proceeding to confer with the staff informally. In the case of a docketed application for a construction permit or an operating license for a facility, the staff shall establish a schedule for its review of the application, specifying the key intermediate steps from the time of docketing until the completion of its review.

(b) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will refer the docketed application to the ACRS as required by law and in such additional cases as he or the Commission may determine to be appropriate. The ACRS will render to the Commission one or more reports as required by law or as requested by the Commission.

(c) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will make each report of the ACRS a part of the record of the docketed application, and transmit copies to the appropriate State and local officials.

[27 FR 377, Jan. 13, 1962, as amended at 36 FR 13270, July 17, 1971; 37 FR 15130, July 28, 1972; 47 FR 9986, Mar. 9, 1982; 69 FR 2235, Jan. 14, 2004; 70 FR 61887, Oct. 27, 2005]

§ 2.103

§ 2.103 Action on applications for by-product, source, special nuclear material, facility and operator licenses.

(a) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, finds that an application for a byproduct, source, special nuclear material, facility, or operator license complies with the requirements of the Act, the Energy Reorganization Act, and this chapter, he will issue a license. If the license is for a facility, or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, or for a construction authorization for a HLW repository at a geologic repository operations area under to parts 60 or 63 of this chapter, or if it is to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the State, Tribal and local officials specified in § 2.104(e) of the issuance of the license. For notice of issuance requirements for licenses issued under part 61 of this chapter, see § 2.106(d).

(b) If the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, finds that an application does not comply with the requirements of the Act and this chapter he may issue a notice of proposed denial or a notice of denial of the application and inform the applicant in writing of:

(1) The nature of any deficiencies or the reason for the proposed denial or the denial, and

(2) The right of the applicant to demand a hearing within twenty (20) days from the date of the notice or such longer period as may be specified in the notice.

[28 FR 10152, Sept. 17, 1963, as amended at 47 FR 57478, Dec. 27, 1982; 66 FR 55787, Nov. 2, 2001; 69 FR 2235, Jan. 14, 2004]

10 CFR Ch. I (1–1–07 Edition)

HEARING ON APPLICATION—HOW INITIATED

§ 2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the FEDERAL REGISTER as required by law at least fifteen (15) days, and in the case of an application concerning a construction permit for a facility of the type described in § 50.21(b) or § 50.22 of this chapter or a testing facility, at least thirty (30) days, prior to the date set for hearing in the notice.¹ In addition, in the case of an application for a construction permit for a facility of the type described in § 50.22 of this chapter, or a testing facility, the notice (other than a notice pursuant to paragraph (d) of this section) shall be issued as soon as practicable after the application has been docketed: *Provided*, That if the Commission, pursuant to § 2.101(a)(2), decides to determine the acceptability of the application on the basis of its technical adequacy as well as completeness, the notice shall be issued as soon as practicable after the application has been tendered. The notice will state:

(1) The time, place, and nature of the hearing and/or prehearing conference, if any;

(2) The authority under which the hearing is to be held;

(3) The matters of fact and law to be considered; and

(4) The time within which answers to the notice shall be filed.

(b) In the case of an application for a construction permit for a facility on

¹If the notice of hearing concerning an application for a construction permit for a facility of the type described in § 50.21(b) or § 50.22 of this chapter or a testing facility does not specify the time and place of initial hearing, a subsequent notice will be published in the FEDERAL REGISTER which will provide at least thirty (30) days notice of the time and place of that hearing. After this notice is given the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing thirty (30) days notice.

which the Act requires a hearing, the notice of hearing will, except as provided in paragraph (d) of this section and unless the Commission determines otherwise, state, in implementation of paragraph (a)(3) of this section:

(1) That, if the proceeding is a contested proceeding, the presiding officer will consider the following issues:²

(i) Whether in accordance with the provisions of §50.35(a) of this chapter:

(a) The applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development, have been described by the applicant and the applicant has identified, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (1) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of the proposed facility; and (2) taking into consideration the site criteria contained in part 100 of this chapter, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

(ii) Whether the applicant is technically qualified to design and construct the proposed facility;

(iii) Whether the applicant is financially qualified to design and construct the proposed facility;

(iv) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and

security or to the health and safety of the public;

(v) If the application is for a construction permit for a nuclear power reactor, a testing facility, a fuel reprocessing plant, or other facility whose construction or operation has been determined by the Commission to have a significant impact on the environment, whether, in accordance with the requirements of subpart A of part 51 of this chapter, the construction permit should be issued as proposed.

(2) That, if the proceeding is not a contested proceeding, the presiding officer will determine:

(i) Without conducting a de novo evaluation of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate to support affirmative findings on (b)(1) (i) through (iii) specified in this section and a negative finding on (b)(1)(iv) specified in this section proposed to be made and the issuance of the construction permit proposed by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, and

(ii) If the application is for a construction permit for a nuclear power reactor, a testing facility, a fuel processing plant, a uranium enrichment facility, or other facility whose construction or operation has been determined by the Commission to have a significant impact on the environment, whether the review conducted by the Commission pursuant to the National Environmental Policy Act (NEPA) has been adequate.

(3) That, regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 of this chapter.

(i) Determine whether the requirements of section 102(2) (A), (C) and (E) of the National Environmental Policy Act and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding

²Issues (i) to (iv) are the issues pursuant to the Atomic Energy Act of 1954, as amended. Issue (v) is the issue pursuant to the National Environmental Policy Act of 1969.

with a view to determining the appropriate action to be taken; and

(iii) Determine whether the construction permit should be issued, denied, or appropriately conditioned to protect environmental values.

(c) In the case of an application for an operating license in which a hearing will be held, the notice of hearing will, except as provided in paragraph (d) of this section and unless the Commission determines otherwise, state, in implementation of paragraph (a)(3) of this section, that the presiding officer will consider any matters in controversy among the parties and may, where he or she determines that a serious safety, environmental, or common defense and security matter has not been raised by the parties, consider such other matter within the purview of:

(1) Whether there is reasonable assurance that construction of the facility will be substantially completed on a timely basis, in conformity with the construction permit and the application as amended, the provisions of the Act, and the regulations in this chapter;

(2) Whether the facility will operate in conformity with the application as amended, the provisions of the Act, and the regulations in this chapter;

(3) Whether there is reasonable assurance: (i) That the activities to be authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations in this chapter;

(4) Whether the applicant is technically and financially qualified to engage in the activities to be authorized by the operating license in accordance with the regulations in this chapter, except that the issue of financial qualification shall not be considered by the presiding officer in an operating license hearing if the applicant is an electric utility seeking a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22;

(5) Whether the applicable provisions of part 140 of this chapter have been satisfied;

(6) Whether issuance of the license will be inimical to the common defense

and security or to the health and safety of the public; and

(7) If the application is for an operating license for a nuclear power reactor, a testing facility, or a fuel reprocessing plant, or other facility whose operation has been determined by the Commission to have a significant impact on the environment, whether, in accordance with the requirements of subpart A of part 51 of this chapter, the operating license should be issued as proposed.³

(d) In an application for a construction permit or an operating license for a facility on which a hearing is required by the Act or this chapter, the notice of hearing will, unless the Commission determines otherwise, state:

(1) A time of the hearing which will be as soon as practicable after compliance with section 189a of the Act and this part;

(2) The presiding officer for the hearing who shall be either an administrative law judge or an atomic safety and licensing board established by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel; and

(3) That matters of radiological health and safety and common defense and security, and matters raised under the National Environmental Policy Act of 1969, will be considered at another hearing if otherwise required or ordered to be held, for which a notice will be published pursuant to paragraphs (a) and (b) of this section, unless otherwise authorized by the Commission.

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility, for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under part 61 of this chapter, for a construction authorization for a HLW repository at a geologic repository operations area pursuant to

³Issues (1) to (6) are the issues pursuant to the Atomic Energy Act of 1954, as amended. Issue (7) is the issue pursuant to the National Environmental Policy Act of 1969.

Nuclear Regulatory Commission

§ 2.105

parts 60 or 63 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, and for a license under part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be so located or conducted within an Indian reservation). The Secretary will transmit a notice of hearing on an application for a license under part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received the notice of docketing under § 72.16(e) of this chapter.

[27 FR 377, Jan. 13, 1962]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 2.104, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, prior to acting thereon, cause to be published in the FEDERAL REGISTER a notice of proposed action with respect to an application for:

(1) A license for a facility;

(2) A license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee. All licenses issued under part 61 of this chapter shall be so noticed;

(3) An amendment of a license specified in paragraph (a) (1) or (2) of this section and which involves a significant hazards consideration;

(4) An amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 of this chapter or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 of this chapter that the amendment involves no significant hazards consideration, though it will provide notice of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter; or

(ii) If the Commission determines under §§ 50.58 and 50.91 of this chapter that an emergency situation exists or that exigent circumstances exist and that the amendment involves no significant hazards consideration, it will provide notice of opportunity for a hearing pursuant to § 2.106 (if a hearing is requested, it will be held after issuance of the amendment);

(5) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, or an amendment thereto, when the license or amendment would authorize actions which may significantly affect the health and safety of the public;

(6) An amendment to a construction authorization for a high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, when such an amendment would authorize actions which may significantly affect the health and safety of the public;

(7) A license under part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) or to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS);

(8) An amendment to a license specified in paragraph (a)(7) of this section when such an amendment presents a genuine issue as to whether the health and safety of the public will be significantly affected; or

§ 2.106

(9) Any other license or amendment as to which the Commission determines that an opportunity for a public hearing should be afforded;

(10) In the case of an application for an operating license for a facility of a type described in § 50.21(b) or § 50.22 of this chapter or a testing facility, a notice of opportunity for hearing shall be issued as soon as practicable after the application has been docketed; or

(11) In the case of an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, a notice of opportunity for hearing, as required by this paragraph, shall be published prior to Commission action authorizing receipt of such wastes; this requirement is in addition to the procedures set out in §§ 2.101(f)(8) and 2.104 of this part, which provide for a hearing on the application prior to issuance of a construction authorization.

(b) The notice of proposed action will set forth:

(1) The nature of the action proposed;

(2) The manner in which a copy of the safety analysis and of the ACRS report, if any, may be obtained or examined.

(c) If an application for a license is complete enough to permit all evaluations, other than completion inspection, necessary for the issuance of a construction permit and operating license, the notice of proposed issuance of a construction permit may provide that on completion of construction and inspection the operating license will be issued without further prior notice.

(d) The notice of proposed action will provide that, within thirty (30) days from the date of publication of the notice in the FEDERAL REGISTER, or such lesser period authorized by law as the Commission may specify:

(1) The applicant may file a request for a hearing; and

(2) Any person whose interest may be affected by the proceeding may file a request for a hearing or a petition for leave to intervene if a hearing has already been requested.

(e)(1) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as ap-

10 CFR Ch. I (1-1-07 Edition)

propriate, may take the proposed action, inform the appropriate State and local officials, and publish in the FEDERAL REGISTER a notice of issuance of the license or other action.

(2) If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the presiding officer who shall be an Atomic Safety and Licensing Board established by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the presiding officer will issue a notice of hearing or an appropriate order.

[27 FR 377, Jan. 13, 1962]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 2.105, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 2.106 Notice of issuance.

(a) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will cause to be published in the FEDERAL REGISTER notice of, and will inform the State and local officials specified in § 2.104(e) of the issuance of:

(1) A license or an amendment of a license for which a notice of proposed action has been previously published; and

(2) An amendment of a license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter, or a testing facility, whether or not a notice of proposed action has been previously published.

(b) The notice of issuance will set forth:

(1) The nature of the license or amendment;

(2) The manner in which copies of the safety analysis, if any, may be obtained and examined; and

(3) A finding that the application for the license or amendment complies with the requirements of the Act and this chapter.

(c) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the FEDERAL REGISTER notice of, and will inform the

Nuclear Regulatory Commission

§ 2.109

State, local, and Tribal officials specified in § 2.104(e) of any action with respect to an application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area, a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, or an amendment to such license for which a notice of proposed action has been previously published.

(d) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the FEDERAL REGISTER notice of, and will inform the State and local officials or tribal governing body specified in § 2.104(e) of any licensing action with respect to a license to receive radioactive waste from other persons for disposal under part 61 of this chapter or the amendment of such a license for which a notice of proposed action has been previously published.

[37 FR 15131, July 28, 1972, as amended at 38 FR 9586, Apr. 18, 1973; 46 FR 13978, Feb. 25, 1981; 47 FR 57478, Dec. 27, 1982; 66 FR 55787, Nov. 2, 2001; 69 FR 2235, Jan. 14, 2004]

§ 2.107 Withdrawal of application.

(a) The Commission may permit an applicant to withdraw an application prior to the issuance of a notice of hearing on such terms and conditions as it may prescribe, or may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. If the application is withdrawn prior to issuance of a notice of hearing, the Commission shall dismiss the proceeding. Withdrawal of an application after the issuance of a notice of hearing shall be on such terms as the presiding officer may prescribe.

(b) The withdrawal of an application does not authorize the removal of any document from the files of the Commission.

(c) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will cause to be published in the FEDERAL REGISTER a notice of the withdrawal of an application if notice

of receipt of the application has been previously published.

[27 FR 377, Jan. 13, 1962, as amended at 28 FR 10152, Sept. 17, 1963; 69 FR 2236, Jan. 14, 2004]

§ 2.108 Denial of application for failure to supply information.

(a) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, may deny an application if an applicant fails to respond to a request for additional information within thirty (30) days from the date of the request, or within such other time as may be specified.

(b) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will cause to be published in the FEDERAL REGISTER a notice of denial when notice of receipt of the application has previously been published, but not notice of hearing has yet been published. The notice of denial will provide that, within thirty (30) days after the date of publication in the FEDERAL REGISTER (1) the applicant may demand a hearing, and (2) any person whose interest may be affected by the proceeding may file a petition for leave to intervene.

(c) When both a notice of receipt of the application and a notice of hearing have been published, the presiding officer, upon a motion made by the staff under § 2.323, will rule whether an application should be denied by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, under paragraph (a) of this section.

[27 FR 377, Jan. 13, 1962, as amended at 39 FR 43195, Dec. 11, 1974; 69 FR 2236, Jan. 14, 2004]

§ 2.109 Effect of timely renewal application.

(a) Except for the renewal of an operating license for a nuclear power plant under 10 CFR 50.21(b) or 50.22, if, at least 30 days prior to the expiration of an existing license authorizing any activity of a continuing nature, the licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.

§ 2.110

(b) If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of an operating license at least 5 years prior to the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

[56 FR 64975, Dec. 13, 1991]

§ 2.110 Filing and administrative action on submittals for design review or early review of site suitability issues.

(a)(1) A submittal pursuant to appendix O of part 52 of this chapter shall be subject to §§ 2.101(a) and 2.390 to the same extent as if it were an application for a permit or license.

(2) Except as specifically provided otherwise by the provisions of appendix Q to part 52 of this chapter, a submittal pursuant to appendix Q shall be subject to § 2.101(a) (2) through (4) to the same extent as if it were an application for a permit or license.

(b) Upon initiation of review by the staff of a submittal of a type described in paragraph (a)(1) of this section, the Director of Nuclear Reactor Regulation shall publish in the FEDERAL REGISTER a notice of receipt of the submittal, inviting comments from interested persons within 60 days of publication or such other time as may be specified, for consideration by the staff and ACRS in their review.

(c) Upon completion of review by the NRC staff and the ACRS of a submittal of the type described in paragraph (a)(1) of this section, the Director of the Office of Nuclear Reactor Regulation shall publish in the FEDERAL REGISTER a determination as to whether or not the design is acceptable, subject to conditions as may be appropriate, and shall make available at the NRC Web site, <http://www.nrc.gov>, a report that analyzes the design.

[40 FR 2976, Jan. 17, 1975, as amended at 42 FR 22885, May 5, 1977; 54 FR 15398, Apr. 18, 1989; 64 FR 48948, Sept. 9, 1999; 69 FR 2236, Jan. 14, 2004]

§ 2.111 Prohibition of sex discrimination.

No person shall on the ground of sex be excluded from participation in, be

10 CFR Ch. I (1–1–07 Edition)

denied a license under, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under the Act or the Energy Reorganization Act of 1974.

[40 FR 8777, Mar. 3, 1975]

Subpart B—Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties

§ 2.200 Scope of subpart.

(a) This subpart prescribes the procedures in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission. However, with regard to the holder of a part 76 certificate of compliance or compliance plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70 of this chapter.

(b) This subpart also prescribes the procedures in cases initiated by the staff to impose civil penalties pursuant to section 234 of the Act and section 206 of the Energy Reorganization Act of 1974.

[36 FR 16896, Aug. 26, 1971, as amended at 42 FR 28893, June 6, 1977; 48 FR 44172, Sept. 28, 1983; 62 FR 6668, Feb. 12, 1997]

§ 2.201 Notice of violation.

(a) In response to an alleged violation of any provision of the Act or this chapter or the conditions of a license or an order issued by the Commission, the Commission may serve on the licensee or other person subject to the jurisdiction of the Commission a written notice of violation; a separate notice may be omitted if an order pursuant to § 2.202 or demand for information pursuant to § 2.204 is issued that otherwise identifies the apparent violation. The notice of violation will concisely state the alleged violation and may require that the licensee or other person submit, within 20 days of the date of the notice or other specified time, a written explanation or statement in

Nuclear Regulatory Commission

§ 2.202

reply if the Commission believes that the licensee has not already addressed all the issues contained in the notice of violation, including:

(1) Corrective steps which have been taken by the licensee or other person and the results achieved;

(2) Corrective steps which will be taken; and

(3) The date when full compliance will be achieved.

(b) The notice may require the licensee or other person subject to the jurisdiction of the Commission to admit or deny the violation and to state the reasons for the violation, if admitted. It may provide that, if an adequate reply is not received within the time specified in the notice, the Commission may issue an order or a demand for information as to why the license should not be modified, suspended or revoked or why such other action as may be proper should not be taken.

[56 FR 40684, Aug. 15, 1991, as amended at 61 FR 43408, Aug. 22, 1996]

§ 2.202 Orders.

(a) The Commission may institute a proceeding to modify, suspend, or revoke a license or to take such other action as may be proper by serving on the licensee or other person subject to the jurisdiction of the Commission an order that will:

(1) Allege the violations with which the licensee or other person subject to the Commission's jurisdiction is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed;

(2) Provide that the licensee or other person must file a written answer to the order under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the order;

(3) Inform the licensee or any other person adversely affected by the order of his or her right, within twenty (20) days of the date of the order, or such other time as may be specified in the order, to demand a hearing on all or part of the order, except in a case where the licensee or other person has consented in writing to the order;

(4) Specify the issues for hearing; and

(5) State the effective date of the order; if the Commission finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation is willful, the order may provide, for stated reasons, that the proposed action be immediately effective pending further order.

(b) A licensee or other person to whom the Commission has issued an order under this section must respond to the order by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation or charge made in the order, and shall set forth the matters of fact and law on which the licensee or other person relies, and, if the order is not consented to, the reasons as to why the order should not have been issued. Except as provided in paragraph (d) of this section, the answer may demand a hearing.

(c) If the answer demands a hearing, the Commission will issue an order designating the time and place of hearing.

(1) If the answer demands a hearing with respect to an immediately effective order, the hearing will be conducted expeditiously, giving due consideration to the rights of the parties.

(2) (i) The licensee or other person to whom the Commission has issued an immediately effective order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the order on the ground that the order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. The motion must state with particularity the reasons why the order is not based on adequate evidence and must be accompanied by affidavits or other evidence relied on. The NRC staff shall respond within (5) days of the receipt of the motion. The motion must be decided by the presiding officer expeditiously. During the pendency of the motion or at any other time, the presiding officer may not stay the immediate effectiveness of the order, either on its own motion, or upon motion of the licensee or other person. The presiding officer will uphold the immediate effectiveness of

§ 2.203

the order if it finds that there is adequate evidence to support immediate effectiveness. An order upholding immediate effectiveness will constitute the final agency action on immediate effectiveness. An order setting aside immediate effectiveness will be referred promptly to the Commission itself and will not be effective pending further order of the Commission.

(ii) The presiding officer may, on motion by the staff or any other party to the proceeding, where good cause exists, delay the hearing on the immediately effective order at any time for such periods as are consistent with the due process rights of the licensee and other affected parties.

(d) An answer may consent to the entry of an order in substantially the form proposed in the order with respect to all or some of the actions proposed in the order. The consent, in the answer or other written document, of the licensee or other person to whom the order has been issued to the entry of an order shall constitute a waiver by the licensee or other person of a hearing, findings of fact and conclusions of law, and of all right to seek Commission and judicial review or to contest the validity of the order in any forum as to those matters which have been consented to or agreed to or on which a hearing has not been requested. An order that has been consented to shall have the same force and effect as an order made after hearing by a presiding officer or the Commission, and shall be effective as provided in the order.

(e) If the order involves the modification of a part 50 license and is a backfit, the requirements of § 50.109 of this chapter shall be followed, unless the licensee has consented to the action required.

[56 FR 40684, Aug. 15, 1991, as amended at 57 FR 20198, May 12, 1992]

§ 2.203 Settlement and compromise.

At any time after the issuance of an order designating the time and place of hearing in a proceeding to modify, suspend, or revoke a license or for other action, the staff and a licensee or other person may enter into a stipulation for the settlement of the proceeding or the compromise of a civil penalty. The stipulation or compromise shall be sub-

10 CFR Ch. I (1-1-07 Edition)

ject to approval by the designated presiding officer or, if none has been designated, by the Chief Administrative Law Judge, according due weight to the position of the staff. The presiding officer, or if none has been designated, the Chief Administrative Law Judge, may order such adjudication of the issues as he may deem to be required in the public interest to dispose of the proceeding. If approved, the terms of the settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding.

[36 FR 16896, Aug. 26, 1971]

§ 2.204 Demand for information.

(a) The Commission may issue to a licensee or other person subject to the jurisdiction of the Commission a demand for information for the purpose of determining whether an order under § 2.202 should be issued, or whether other action should be taken, which demand will:

(1) Allege the violations with which the licensee or other person is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for issuing the demand; and

(2) Provide that the licensee must, or the other person may, file a written answer to the demand for information under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the demand for information.

(b) A licensee to whom the Commission has issued a demand for information under this section must respond to the demand by filing a written answer under oath or affirmation; any other person to whom the Commission has issued a demand for information may, in its discretion, respond to the demand by filing a written answer under oath or affirmation. The licensee's answer shall specifically admit or deny each allegation or charge made in the demand for information, and shall set forth the matters of fact and law on which the licensee relies. A person other than a licensee may answer as described above, or by setting forth its reasons why the demand should not have been issued and, if the requested information is not provided, the reasons why it is not provided.

Nuclear Regulatory Commission

§ 2.205

(c) Upon review of the answer filed pursuant to paragraph (a)(2) of this section, or if no answer is filed, the Commission may institute a proceeding pursuant to 10 CFR 2.202 to take such action as may be proper.

(d) An answer may consent to the entry of an order pursuant to § 2.202 in substantially the form proposed in the demand for information. Such consent shall constitute a waiver as provided in § 2.202(d).

[56 FR 40685, Aug. 15, 1991]

§ 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section 234 of the Act, the Executive Director for Operations or the Executive Director's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201 or § 76.70(d) of this chapter. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, part 76 certificate of compliance or compliance plan, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to Section 234c of the Act.

(b) Within twenty (20) days of the date of a notice of violation or other time specified in the notice, the person charged may either pay the penalty in the amount proposed or answer the notice of violation. The answer to the notice of violation shall state any facts, explanations, and arguments, denying

the charges of violation, or demonstrating any extenuating circumstances, error in the notice of violation, or other reason why the penalty should not be imposed and may request remission or mitigation of the penalty.

(c) If the person charged with violation fails to answer within the time specified in paragraph (b) of this section, an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in paragraph (a) of this section.

(d) If the person charged with violation files an answer to the notice of violation, the Executive Director for Operations or the Executive Director's designee, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within twenty (20) days of the date of the order or other time specified in the order, request a hearing.

(e) If the person charged with violation requests a hearing, the Commission will issue an order designating the time and place of hearing.

(f) If a hearing is held, an order will be issued after the hearing by the presiding officer or the Commission dismissing the proceeding or imposing, mitigating, or remitting the civil penalty.

(g) The Executive Director for Operations or the Executive Director's designee, as appropriate may compromise any civil penalty, subject to the provisions of § 2.203.

(h) If the civil penalty is not compromised, or is not remitted by the Executive Director for Operations or the Executive Director's designee, as appropriate, the presiding officer, or the Commission, and if payment is not made within ten (10) days following either the service of the order described in paragraph (c) or (f) of this section, or the expiration of the time for requesting a hearing described in paragraph (d) of this section, the Executive Director for Operations or the Executive Director's designee, as appropriate, may refer the matter to the Attorney General for collection.

(i) Except when payment is made after compromise or mitigation by the Department of Justice or as ordered by

§ 2.206

10 CFR Ch. I (1–1–07 Edition)

a court of the United States, following reference of the matter to the Attorney General for collection, payment of civil penalties imposed under Section 234 of the Act are to be made payable to the U.S. Nuclear Regulatory Commission, in U.S. funds, by check, draft, money order, credit cards, or electronic funds transfer such as Automated Clearing House (ACH) using Electronic Data Interchange (EDI). Federal agencies may also make payment by the On-Line Payment and Collections System (OPAC's). All payments are to be made in accordance with the specific payment instructions provided with Notices of Violation that propose civil penalties and Orders Imposing Civil Monetary Penalties.

(j) *Amount.* A civil monetary penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or any other statute within the jurisdiction of the Commission that provides for the imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed \$130,000 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

[36 FR 16896, Aug. 26, 1971, as amended at 52 FR 31608, Aug. 21, 1987; 54 FR 53315, Dec. 28, 1989; 61 FR 53555, Oct. 11, 1996; 62 FR 6668, Feb. 12, 1997; 63 FR 31850, June 10, 1998; 65 FR 59272, Oct. 4, 2000; 69 FR 62394, Oct. 26, 2004]

§ 2.206 Requests for action under this subpart.

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. Requests must be addressed to the Executive Director for Operations and must be filed either by hand delivery to the NRC's Offices at 11555 Rockville Pike, Rockville, Maryland; by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by electronic submissions, for example, via facsimile, Electronic Information Exchange, e-mail, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive

the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/eie.html>, by calling (301) 415-6030, by e-mail to EIE@nrc.gov; or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The request must specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

(b) Within a reasonable time after a request pursuant to paragraph (a) of this section has been received, the Director of the NRC office with responsibility for the subject matter of the request shall either institute the requested proceeding in accordance with this subpart or shall advise the person who made the request in writing that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.

(c)(1) Director's decisions under this section will be filed with the Office of the Secretary. Within twenty-five (25) days after the date of the Director's decision under this section that no proceeding will be instituted or other action taken in whole or in part, the Commission may on its own motion review that decision, in whole or in part, to determine if the Director has abused his discretion. This review power does not limit in any way either the Commission's supervisory power over delegated staff actions or the Commission's power to consult with the staff on a formal or informal basis regarding institution of proceedings under this section.

(2) No petition or other request for Commission review of a Director's decision under this section will be entertained by the Commission.

(3) The Secretary is authorized to extend the time for Commission review

Nuclear Regulatory Commission

§ 2.304

on its own motion of a Director's denial under paragraph (c) of this section.

[39 FR 12353, Apr. 5, 1974, as amended at 42 FR 36240, July 14, 1977; 45 FR 73466, Nov. 5, 1980; 52 FR 31608, Aug. 21, 1987; 53 FR 43419, Oct. 27, 1988; 64 FR 48948, Sept. 9, 1999; 68 FR 58799, Oct. 10, 2003; 69 FR 2236, Jan. 14, 2004; 69 FR 41749, July 12, 2004]

Subpart C—Rules of General Applicability: Hearing Requests, Petitions To Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings

SOURCE: 69 FR 2236, Jan. 14, 2004, unless otherwise noted.

§ 2.300 Scope of subpart C.

The provisions of this subpart apply to all adjudications conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 10 CFR Part 2, unless specifically stated otherwise in this subpart.

§ 2.301 Exceptions.

Consistent with 5 U.S.C. 554(a)(4) of the Administrative Procedure Act, the Commission may provide alternative procedures in adjudications to the extent that the conduct of military or foreign affairs functions is involved.

§ 2.302 Filing of documents.

(a) Documents must be filed with the Commission in adjudications subject to this part either by:

(1) First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff;

(2) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff;

(3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV;

(4) By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415-1101; verification number is (301) 415-1966.

(b) All documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission. For purposes of service of documents, the staff of the Commission is considered a party.

(c) Filing by mail, electronic mail, or facsimile is considered complete as of the time of deposit in the mail or upon electronic mail or facsimile transmission.

§ 2.303 Docket.

The Secretary shall maintain a docket for each proceeding conducted under this part, commencing with either the initial notice of hearing, notice of proposed action, order, request for hearing or petition for leave to intervene, as appropriate. The Secretary shall maintain all files and records of proceedings, including transcripts and video recordings of testimony, exhibits, and all papers, correspondence, decisions and orders filed or issued. All documents, records, and exhibits filed in any proceeding must be filed with the Secretary as described in §§ 2.302 and 2.304.

§ 2.304 Formal requirements for documents; acceptance for filing.

(a) Each document filed in an adjudication subject to this part to which a docket number has been assigned must show the docket number and title of the proceeding.

(b) Each document must be bound on the left side and typewritten, printed, or otherwise reproduced in permanent form on good unglazed paper of standard letterhead size. Each page must begin not less than one inch from the top, with side and bottom margins of not less than one inch. Text must be double-spaced, except that quotations may be single-spaced and indented. The requirements of this paragraph do not

§ 2.305

apply to original documents or admissible copies offered as exhibits, or to specifically prepared exhibits.

(c) The original of each document must be signed in ink by the party or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing, his or her address, and the date of signature. The signature of a person signing in a representative capacity is a representation that the document has been subscribed in the capacity specified with full authority that he or she has read it and knows the contents that to the best of his or her knowledge, information and belief the statements made in it are true, and that it is not interposed for delay. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be stricken.

(d) Except as otherwise required by this part or by order, a pleading or other document, other than correspondence, must be filed in an original and two conformed copies.

(e) The first document filed by any person in a proceeding must designate the name and address of a person on whom service may be made. This document must also designate the electronic mail address and facsimile number, if any, of the person on whom service may be made.

(f) A document filed by electronic mail or facsimile transmission need not comply with the formal requirements of paragraphs (b), (c), and (d) of this section if an original and two (2) copies otherwise complying with all of the requirements of this section are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

(g) *Acceptance for filing.* Any document that fails to conform to the requirements of this section may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any document that is not accepted for filing will not be entered on the Commission's docket.

10 CFR Ch. I (1-1-07 Edition)

§ 2.305 Service of papers, methods, proof.

(a) Service of papers by the Commission. Except for subpoenas, the Commission will serve all orders, decisions, notices, and other papers issued by it upon all parties.

(b) Who may be served. Any paper required to be served upon a party must be served upon that person or upon the representative designated by the party or by law to receive service of papers. When a party has appeared by attorney, service must be made upon the attorney of record.

(c) How service may be made. Service may be made by personal delivery or courier, by express mail or expedited delivery service, by first class, certified or registered mail, by e-mail or facsimile transmission, or as otherwise authorized by law. If service is made by e-mail or facsimile transmission, the original signed copy must be transmitted to the Secretary by personal delivery, courier, express mail or expedited delivery service, or first class, certified, or registered mail. In addition, if service is by e-mail, a paper copy must also be served by any other service method permitted under this paragraph. Where there are numerous parties to a proceeding, the Commission may make special provision regarding the service of papers. The presiding officer shall require service by the most expeditious means that is available to all parties in the proceeding, including express mail or expedited delivery service, and/or electronic or facsimile transmission, unless the presiding officer finds that this requirement would impose undue burden or expense on some or all of the parties.

(d) Service on the Secretary. (1) All pleadings must be served on the Secretary of the Commission in the same or equivalent manner, *i.e.*, personal delivery or courier, express mail or expedited delivery service, facsimile or electronic transmission, that they are served upon the adjudicatory tribunals and the parties to the proceedings, so that the Secretary will receive the pleading at approximately the same time that it is received by the tribunal to which the pleading is directed.

Nuclear Regulatory Commission

§ 2.306

(2) When pleadings are personally delivered to tribunals while they are conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished by courier, express mail or expedited delivery service, or by electronic or facsimile transmission.

(3) Service of pre-filed testimony and demonstrative evidence (*e.g.*, maps and other physical exhibits) on the Secretary may be made by first class mail in all cases, unless the presiding officer directs otherwise.

(4) The addresses for the Secretary are:

(i) First class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

(ii) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff.

(iii) E-mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV; and

(iv) Facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415-1101; verification number is (301) 415-1966.

(e) When service is complete. Service upon a party is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with that person's clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place in the office, or if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

(2) By mail, on deposit in the United States mail, properly stamped and addressed;

(3) By electronic mail, on transmission thereof, and service of a copy by another method of service permitted in paragraph (c) of this section;

(4) By facsimile transmission, on transmission thereof and receipt of electronic confirmation that one or more of the addressees for a party has successfully received the transmission. If the sender receives an electronic message that the facsimile transmission to an addressee was not deliverable or is otherwise informed that a transmission was unreadable, transmission to that person is not considered complete. In such an event, the sender shall reserve the document in accordance with paragraph (e)(1) through (e)(4) of this section; or

(5) When service cannot be effected in a manner provided by paragraphs (e)(1) to (4) inclusive of this section, in any other manner authorized by law.

(f) Service on the NRC staff. (1) Service shall be made upon the NRC staff of all papers and documents required to be filed with parties and the presiding officer in all proceedings, including those proceedings where the NRC staff informs the presiding officer of its determination not to participate as a party.

(2) If the NRC staff decides not to participate as a party in a proceeding, it shall, in its notification to the presiding officer and parties of its determination not to participate, designate a person and address for service of papers and documents.

§ 2.306 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon by first class mail, five (5) days are added to the prescribed period. Two (2) days are added to the prescribed period when a document is served by express mail or expedited delivery service. No time is added when the notice or paper is served in

§ 2.307

10 CFR Ch. I (1-1-07 Edition)

person, by courier, electronic mail or facsimile transmission. The period allotted for the recipient's response commences upon confirmation of receipt under § 2.305(e)(3) or (4), except that if a document is served in person, by courier, electronic transmission, or facsimile, and is received by a party after 5 p.m., in the recipient's time zone on the date of transmission, the recipient's response date is extended by one (1) business day.

§ 2.307 Extension and reduction of time limits.

(a) Except as otherwise provided by law, the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time, may be extended or shortened either by the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer.

(b) If this part does not prescribe a time limit for an action to be taken in the proceeding, the Commission or the presiding officer may set a time limit for the action.

§ 2.308 Treatment of requests for hearing or petitions for leave to intervene by the Secretary.

Upon receipt of a request for hearing or a petition to intervene, the Secretary will forward the request or petition and/or proffered contentions and any answers and replies either to the Commission for a ruling on the request/petition and/or proffered contentions or to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel for the designation of a presiding officer under § 2.313(a) to rule on the matter.

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

(a) General requirements. Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene and a specification of the contentions which the person seeks to have litigated in the hearing. Except as provided in paragraph (e) of this section, the Commission, presiding officer

or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section. In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part in addition to the factors in paragraph (d) of this section. If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

(b) Timing. Unless otherwise provided by the Commission, the request and/or petition and the list of contentions must be filed as follows:

(1) In proceedings for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statute, or pursuant to a license condition, twenty (20) days from the date of publication of the notice in the FEDERAL REGISTER.

(2) In proceedings for the initial authorization to construct a high-level radioactive waste geologic repository, and the initial licensee to receive and process high level radioactive waste at a geological repository operations area, thirty (30) days from the date of publication of the notice in the FEDERAL REGISTER.

(3) In proceedings for which a FEDERAL REGISTER notice of agency action is published (other than a proceeding covered by paragraphs (b)(1) or (b)(2) of this section), not later than:

(i) The time specified in any notice of hearing or notice of proposed action or as provided by the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/

or petition, which may not, with the exception of a notice provided under §2.102(d)(3), be less than 60 days from the date of publication of the notice in the FEDERAL REGISTER;

(ii) The time provided in §2.102(d)(3); or

(iii) If no period is specified, sixty (60) days from the date of publication of the notice.

(4) In proceedings for which a FEDERAL REGISTER notice of agency action is not published, not later than the latest of:

(i) Sixty (60) days after publication of notice on the NRC Web site at <http://www.nrc.gov/public-involve/major-actions.html>, or

(ii) Sixty (60) days after the requestor receives actual notice of a pending application, but not more than sixty (60) days after agency action on the application.

(5) For orders issued under §2.202 the time period provided therein.

(c) Nontimely filings. (1) Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the request and/or petition and contentions that the request and/or petition should be granted and/or the contentions should be admitted based upon a balancing of the following factors to the extent that they apply to the particular nontimely filing:

(i) Good cause, if any, for the failure to file on time;

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding;

(iv) The possible effect of any order that may be entered in the proceeding on the requestor's/petitioner's interest;

(v) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(vi) The extent to which the requestor's/petitioner's interests will be represented by existing parties;

(vii) The extent to which the requestor's/petitioner's participation will broaden the issues or delay the proceeding; and

(viii) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record.

(2) The requestor/petitioner shall address the factors in paragraphs (c)(1)(i) through (c)(1)(viii) of this section in its nontimely filing.

(d) Standing. (1) General requirements. A request for hearing or petition for leave to intervene must state:

(i) The name, address and telephone number of the requestor or petitioner;

(ii) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding;

(iii) The nature and extent of the requestor's/petitioner's property, financial or other interest in the proceeding; and

(iv) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest.

(2) State, local governmental body, and affected, Federally-recognized Indian Tribe. (i) A State, local governmental body (county, municipality or other subdivision), and any affected Federally-recognized Indian Tribe that desires to participate as a party in the proceeding shall submit a request for hearing/petition to intervene. The request/petition must meet the requirements of this section (including the contention requirements in paragraph (f) of this section), except that a State, local governmental body or affected Federally-recognized Indian Tribe that wishes to be a party in a proceeding for a facility located within its boundaries need not address the standing requirements under this paragraph. The State, local governmental body, and affected Federally-recognized Indian Tribe shall, in its request/petition, each designate a single representative for the hearing.

(ii) The Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene will admit as a party to a proceeding a single designated representative of the State, a single designated representative for each local governmental body (county, municipality or other subdivision), and a single designated representative for each

affected Federally-recognized Indian Tribe. In determining the request/petition of a State, local governmental body, and any affected Federally-recognized Indian Tribe that wishes to be a party in a proceeding for a facility located within its boundaries, the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene shall not require a further demonstration of standing.

(iii) In any proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Commission shall permit intervention by the State and local governmental body (county, municipality or other subdivision) in which such an area is located and by any affected Federally-recognized Indian Tribe as defined in parts 60 or 63 of this chapter if the requirements of paragraph (f) of this section are satisfied with respect to at least one contention. All other petitions for intervention in any such proceeding must be reviewed under the provisions of paragraphs (a) through (f) of this section.

(3) The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on requests for hearing and/or petitions for leave to intervene will determine whether the petitioner has an interest affected by the proceeding considering the factors enumerated in §2.309(d)(1)-(2), among other things. In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

(e) Discretionary Intervention. The presiding officer may consider a request for discretionary intervention when at least one requestor/petitioner has established standing and at least one admissible contention has been admitted so that a hearing will be held. A requestor/petitioner may request that his or her petition be granted as a matter of discretion in the event that the petitioner is determined to lack stand-

ing to intervene as a matter of right under paragraph (d)(1) of this section. Accordingly, in addition to addressing the factors in paragraph (d)(1) of this section, a petitioner who wishes to seek intervention as a matter of discretion in the event it is determined that standing as a matter of right is not demonstrated shall address the following factors in his/her initial petition, which the Commission, the presiding officer or the Atomic Safety and Licensing Board will consider and balance:

(1) Factors weighing in favor of allowing intervention—

(i) The extent to which the requestor's/petitioner's participation may reasonably be expected to assist in developing a sound record;

(ii) The nature and extent of the requestor's/petitioner's property, financial or other interests in the proceeding; and

(iii) The possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interest;

(2) Factors weighing against allowing intervention—

(i) The availability of other means whereby the requestor's/petitioner's interest will be protected;

(ii) The extent to which the requestor's/petitioner's interest will be represented by existing parties; and

(iii) The extent to which the requestor's/petitioner's participation will inappropriately broaden the issues or delay the proceeding.

(f) Contentions. (1) A request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

(i) Provide a specific statement of the issue of law or fact to be raised or controverted;

(ii) Provide a brief explanation of the basis for the contention;

(iii) Demonstrate that the issue raised in the contention is within the scope of the proceeding;

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding;

(v) Provide a concise statement of the alleged facts or expert opinions which support the requestor's/petitioner's position on the issue and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely to support its position on the issue; and

(vi) Provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief.

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer upon a showing that—

(i) The information upon which the amended or new contention is based was not previously available;

(ii) The information upon which the amended or new contention is based is materially different than information previously available; and

(iii) The amended or new contention has been submitted in a timely fashion

based on the availability of the subsequent information.

(3) If two or more requestors/petitioners seek to co-sponsor a contention, the requestors/petitioners shall jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention. If a requestor/petitioner seeks to adopt the contention of another sponsoring requestor/petitioner, the requestor/petitioner who seeks to adopt the contention must either agree that the sponsoring requestor/petitioner shall act as the representative with respect to that contention, or jointly designate with the sponsoring requestor/petitioner a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

(g) Selection of hearing procedures. A request for hearing and/or petition for leave to intervene may also address the selection of hearing procedures, taking into account the provisions of § 2.310. If a request/petition relies upon § 2.310(d), the request/petition must demonstrate, by reference to the contention and the bases provided and the specific procedures in subpart G of this part, that resolution of the contention necessitates resolution of material issues of fact which may be best determined through the use of the identified procedures.

(h) Answers to requests for hearing and petitions to intervene. Unless otherwise specified by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on requests for hearings or petitions for leave to intervene—

(1) The applicant/licensee, the NRC staff, and any other party to a proceeding may file an answer to a request for a hearing, a petition to intervene and/or proffered contentions within twenty-five (25) days after service of the request for hearing, petition and/or contentions. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (g) of this section insofar as these sections apply to the filing that is the subject of the answer.

(2) The requestor/petitioner may file a reply to any answer within seven (7) days after service of that answer.

§2.310

10 CFR Ch. I (1–1–07 Edition)

(3) No other written answers or replies will be entertained.

(i) Decision on request/petition. The presiding officer shall, within forty-five (45) days after the filing of answers and replies under paragraph (h) of this section, issue a decision on each request for hearing/petition to intervene, absent an extension from the Commission.

§2.310 Selection of hearing procedures.

Upon a determination that a request for hearing/petition to intervene should be granted and a hearing held, the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request/petition will determine and identify the specific hearing procedures to be used for the proceeding as follows—

(a) Except as determined through the application of paragraphs (b) through (h) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72 of this chapter may be conducted under the procedures of subpart L of this part.

(b) Proceedings on enforcement matters must be conducted under the procedures of subpart G of this part, unless all parties agree and jointly request that the proceedings be conducted under the procedures of subpart L or subpart N of this part, as appropriate.

(c) Proceedings on the licensing of the construction and operation of a uranium enrichment facility must be conducted under the procedures of subpart G of this part.

(d) In proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits for nuclear power reactors, where the presiding officer by order finds that resolution of the contention or contested matter necessitates resolution of issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter,

the hearing for resolution of that contention or contested matter will be conducted under subpart G of this part.

(e) Proceedings on applications for a license or license amendment to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant must be conducted under the procedures of subpart L of this part, unless a party requests that the proceeding be conducted under the procedures of subpart K of this part, or if all parties agree and jointly request that the proceeding be conducted under the procedures of subpart N of this part.

(f) Proceedings on an application for initial construction authorization for a high-level radioactive waste repository at a geologic repository operations area noticed pursuant to §§2.101(f)(8) or 2.105(a)(5), and proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area must be conducted under the procedures of subparts G and J of this part. Subsequent amendments to a construction authorization for a high-level radioactive geologic repository, and amendments to a license to receive and possess high level radioactive waste at a high level waste geologic repository may be conducted under the procedures of subpart L of this part, unless all parties agree and jointly request that the proceeding be conducted under the procedures of subpart N of this part.

(g) Proceedings on an application for the direct or indirect transfer of control of an NRC license which transfer requires prior approval of the NRC under the Commission's regulations, governing statutes or pursuant to a license condition shall be conducted under the procedures of subpart M of this part, unless the Commission determines otherwise in a case-specific order.

(h) Except as determined through the application of paragraphs (b) through (g) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72 of this chapter, and proceedings

Nuclear Regulatory Commission

§2.313

on an application for the direct or indirect transfer of control of an NRC license may be conducted under the procedures of subpart N of this part if—

(1) The hearing itself is expected to take no more than two (2) days to complete; or

(2) All parties to the proceeding agree that it should be conducted under the procedures of subpart N of this part.

(i) In design certification rulemaking proceedings under part 52 of this chapter, any informal hearing held under §52.51 of this chapter must be conducted under the procedures of subpart O of this part.

(j) In proceedings where the Commission grants a petition filed under §2.335(b), the Commission may, in its discretion, conduct a hearing under the procedures of subpart O of this part to assist the Commission in developing a record on the matters raised in the petition.

§2.311 Interlocutory review of rulings on requests for hearing/petitions to intervene and selection of hearing procedures.

(a) An order of the presiding officer or of the Atomic Safety and Licensing Board on a request for hearing or a petition to intervene may be appealed to the Commission, only in accordance with the provisions of this section, within ten (10) days after the service of the order. The appeal must be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within ten (10) days after service of the appeal. The supporting brief and any answer must conform to the requirements of §2.341(c)(2). No other appeals from rulings on requests for hearings are allowed.

(b) An order denying a petition to intervene and/or request for hearing is appealable by the requestor/petitioner on the question as to whether the request and/or petition should have been granted.

(c) An order granting a petition to intervene and/or request for hearing is appealable by a party other than the requestor/petitioner on the question as to whether the request/petition should have been wholly denied.

(d) An order selecting a hearing procedure may be appealed by any party on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in §2.310. The appeal must be filed with the Commission no later than ten (10) days after issuance of the order selecting a hearing procedure.

§2.312 Notice of hearing.

(a) In a proceeding in which the terms of a notice of hearing are not otherwise prescribed by this part, the order or notice of hearing will state:

(1) The nature of the hearing and its time and place, or a statement that the time and place will be fixed by subsequent order;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law asserted or to be considered; and

(4) A statement describing the specific hearing procedures or subpart that will be used for the hearing.

(b) The time and place of hearing will be fixed with due regard for the convenience of the parties or their representatives, the nature of the proceeding and the public interest.

§2.313 Designation of presiding officer, disqualification, unavailability, and substitution.

(a) Designation of presiding officer. The Commission may provide in the notice of hearing that one or more members of the Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or a named officer who has been delegated final authority in the matter, shall be the presiding officer. The Commission alone shall designate the presiding officer in a hearing conducted under subpart O. If the Commission does not designate the presiding officer for a hearing under subparts G, J, K, L, M, or N of this part, then the Chief Administrative Judge shall issue an order designating:

(1) An Atomic Safety and Licensing Board appointed under Section 191 of the Atomic Energy Act of 1954, as amended, or an administrative law judge appointed pursuant to 5 U.S.C.

§2.314

10 CFR Ch. I (1–1–07 Edition)

3105, for a hearing conducted under subparts G, J, K, L, or N of this part; or

(2) An Atomic Safety and Licensing Board, an administrative law judge, or an administrative judge for a hearing conducted under subpart M of this part.

(b) Disqualification. (1) If a designated presiding officer or a designated member of an Atomic Safety and Licensing Board believes that he or she is disqualified to preside or to participate as a board member in the hearing, he or she shall withdraw by notice on the record and shall notify the Commission or the Chief Administrative Judge, as appropriate, of the withdrawal.

(2) If a party believes that a presiding officer or a designated member of an Atomic Safety and Licensing Board should be disqualified, the party may move that the presiding officer or the Licensing Board member disqualify himself or herself. The motion must be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion or the Licensing Board member does not disqualify himself, the motion must be referred to the Commission. The Commission will determine the sufficiency of the grounds alleged.

(c) Unavailability. If a presiding officer or a designated member of an Atomic Safety and Licensing Board becomes unavailable during the course of a hearing, the Commission or the Chief Administrative Judge, as appropriate, will designate another presiding officer or Atomic Safety and Licensing Board member. If he or she becomes unavailable after the hearing has been concluded, then:

(1) The Commission may designate another presiding officer;

(2) The Chief Administrative Judge or the Commission, as appropriate, may designate another Atomic Safety and Licensing Board member to participate in the decision;

(3) The Commission may direct that the record be certified to it for decision.

(d) Substitution. If a presiding officer or a designated member of an Atomic Safety and Licensing Board is substituted for the one originally des-

ignated, any motion predicated upon the substitution must be made within five (5) days after the substitution.

§2.314 Appearance and practice before the Commission in adjudicatory proceedings.

(a) Standards of practice. In the exercise of their functions under this subpart, the Commission, the Atomic Safety and Licensing Boards, Administrative Law Judges, and Administrative Judges function in a quasi-judicial capacity. Accordingly, parties and their representatives in proceedings subject to this subpart are expected to conduct themselves with honor, dignity, and decorum as they should before a court of law.

(b) Representation. A person may appear in an adjudication on his or her own behalf or by an attorney-at-law. A partnership, corporation, or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, and facsimile number and email address, if any; the name and address of the person or entity on whose behalf he or she appears; and, in the case of an attorney-at-law, the basis of his or her eligibility as a representative or, in the case of another representative, the basis of his or her authority to act on behalf of the party.

(c) Reprimand, censure or suspension from the proceeding. (1) A presiding officer, or the Commission may, if necessary for the orderly conduct of a proceeding, reprimand, censure or suspend from participation in the particular proceeding pending before it any party or representative of a party who refuses to comply with its directions, or who is disorderly, disruptive, or engages in contemptuous conduct.

(2) A reprimand, censure, or a suspension that is ordered to run for one day

Nuclear Regulatory Commission

§2.315

or less must state the grounds for the action in the record of the proceeding, and must advise the person disciplined of the right to appeal under paragraph (c)(3) of this section. A suspension that is ordered for a longer period must be in writing, state the grounds on which it is based, and advise the person suspended of the right to appeal and to request a stay under paragraphs (c)(3) and (c)(4) of this section. The suspension may be stayed for a reasonable time in order for an affected party to obtain other representation if this would be necessary to prevent injustice.

(3) Anyone disciplined under this section may file an appeal with the Commission within ten (10) days after issuance of the order. The appeal must be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. The Commission shall consider each appeal on the merits, including appeals in cases in which the suspension period has already run. If necessary for a full and fair consideration of the facts, the Commission may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. In the latter event, unless the Commission provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. The hearing must begin as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Commission, as appropriate, shall notify the State bar(s) to which the attorney is admitted. The notification must include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Commission.

(4) A suspension exceeding one (1) day is not effective for seventy-two (72) hours from the date the suspension order is issued. Within this time, a suspended individual may request a stay of the sanction from the appropriate reviewing tribunal pending appeal. No responses to the stay request from

other parties will be entertained. If a timely stay request is filed, the suspension must be stayed until the reviewing tribunal rules on the motion. The stay request must be in writing and contain the information specified in §2.342(b). The Commission shall rule on the stay request within ten (10) days after the filing of the motion. The Commission shall consider the factors specified in §2.342(e)(1) and (e)(2) in determining whether to grant or deny a stay application.

§2.315 Participation by a person not a party.

(a) A person who is not a party (including persons who are affiliated with or represented by a party) may, in the discretion of the presiding officer, be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any prehearing conference within the limits and on the conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding. Such statements of position shall not be considered evidence in the proceeding.

(b) The Secretary will give notice of a hearing to any person who requests it before the issuance of the notice of hearing, and will furnish a copy of the notice of hearing to any person who requests it thereafter. If a communication bears more than one signature, the Commission will give the notice to the person first signing unless the communication clearly indicates otherwise.

(c) The presiding officer will afford an interested State, local governmental body (county, municipality or other subdivision), and affected, Federally-recognized Indian Tribe, which has not been admitted as a party under §2.309, a reasonable opportunity to participate in a hearing. Each State, local governmental body, and affected Federally-recognized Indian Tribe shall, in its request to participate in a hearing, each designate a single representative for the hearing. The representative shall be permitted to introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, advise the Commission

§2.316

without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission under §2.341 with respect to the admitted contentions. The representative shall identify those contentions on which it will participate in advance of any hearing held.

(d) If a matter is taken up by the Commission under §2.341 or *sua sponte*, a person who is not a party may, in the discretion of the Commission, be permitted to file a brief "*amicus curiae*." Such a person shall submit the amicus brief together with a motion for leave to do so which identifies the interest of the person and states the reasons why a brief is desirable. Unless the Commission provides otherwise, the brief must be filed within the time allowed to the party whose position the brief will support. A motion of a person who is not a party to participate in oral argument before the Commission will be granted at the discretion of the Commission.

§2.316 Consolidation of parties.

On motion or on its or his own initiative, the Commission or the presiding officer may order any parties in a proceeding who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. However, it may not order any consolidation that would prejudice the rights of any party. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

§2.317 Separate hearings; consolidation of proceedings.

(a) Separate hearings. On motion by the parties or upon request of the presiding officer for good cause shown, or on its own initiative, the Commission may establish separate hearings in a proceeding if it is found that the action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accord-

10 CFR Ch. I (1-1-07 Edition)

ance with the other provisions of this subpart.

(b) Consolidation of proceedings. On motion and for good cause shown or on its own initiative, the Commission or the presiding officers of each affected proceeding may consolidate for hearing or for other purposes two or more proceedings, or may hold joint hearings with interested States and/or other Federal agencies on matters of concurrent jurisdiction, if it is found that the action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

§2.318 Commencement and termination of jurisdiction of presiding officer.

(a) Unless the Commission orders otherwise, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If a presiding officer has not been designated, the Chief Administrative Judge has jurisdiction or, if he or she is unavailable, another administrative judge or administrative law judge has jurisdiction. A proceeding commences when a notice of hearing or a notice of proposed action under §2.105 is issued. When a notice of hearing provides that the presiding officer is to be an administrative judge or an administrative law judge, the Chief Administrative Judge will designate by order the administrative judge or administrative law judge, as appropriate, who is to preside. The presiding officer's jurisdiction in each proceeding terminates when the period within which the Commission may direct that the record be certified to it for final decision expires, when the Commission renders a final decision, or when the presiding officer withdraws from the case upon considering himself or herself disqualified, whichever is earliest.

(b) The Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, may issue an order and take any otherwise proper administrative action with respect to a licensee who is a party to a pending proceeding. Any

Nuclear Regulatory Commission

§ 2.321

order related to the subject matter of the pending proceeding may be modified by the presiding officer as appropriate for the purpose of the proceeding.

§ 2.319 Power of the presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to control the prehearing and hearing process, to avoid delay and to maintain order. The presiding officer has all the powers necessary to those ends, including the powers to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law, including subpoenas requested by a participant for the attendance and testimony of witnesses or the production of evidence upon the requestor's showing of general relevance and reasonable scope of the evidence sought;
- (c) Consolidate parties and proceedings in accordance with §§ 2.316 and 2.317 and/or direct that common interests be represented by a single spokesperson;
- (d) Rule on offers of proof and receive evidence. In proceedings under this part, strict rules of evidence do not apply to written submissions. However, the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of a written presentation or a response to a written question that is irrelevant, immaterial, unreliable, duplicative or cumulative.
- (e) Restrict irrelevant, immaterial, unreliable, duplicative or cumulative evidence and/or arguments;
- (f) Order depositions to be taken as appropriate;
- (g) Regulate the course of the hearing and the conduct of participants;
- (h) Dispose of procedural requests or similar matters;
- (i) Examine witnesses;
- (j) Hold conferences before or during the hearing for settlement, simplification of contentions, or any other proper purpose;
- (k) Set reasonable schedules for the conduct of the proceeding and take actions reasonably calculated to maintain overall schedules;
- (l) Certify questions to the Commission for its determination, either in the

presiding officer's discretion, or on motion of a party or on direction of the Commission;

(m) Reopen a proceeding for the receipt of further evidence at any time before the initial decision;

(n) Appoint special assistants from the Atomic Safety and Licensing Board Panel under § 2.322;

(o) Issue initial decisions as provided in this part;

(p) Dispose of motions by written order or by oral ruling during the course of a hearing or prehearing conference. The presiding officer should ensure that parties not present for the oral ruling are notified promptly of the ruling;

(q) Issue orders necessary to carry out the presiding officer's duties and responsibilities under this part; and

(r) Take any other action consistent with the Act, this chapter, and 5 U.S.C. 551-558.

§ 2.320 Default.

If a party fails to file an answer or pleading within the time prescribed in this part or as specified in the notice of hearing or pleading, to appear at a hearing or prehearing conference, to comply with any prehearing order entered by the presiding officer, or to comply with any discovery order entered by the presiding officer, the Commission or the presiding officer may make any orders in regard to the failure that are just, including, among others, the following:

(a) Without further notice, find the facts as to the matters regarding which the order was made in accordance with the claim of the party obtaining the order, and enter the order as appropriate; or

(b) Proceed without further notice to take proof on the issues specified.

§ 2.321 Atomic Safety and Licensing Boards.

(a) The Commission or the Chief Administrative Judge may establish one or more Atomic Safety and Licensing Boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom have such technical or other qualifications as the

§ 2.322

Commission or the Chief Administrative Judge determines to be appropriate to the issues to be decided. The members of an Atomic Safety and Licensing Board shall be designated from the Atomic Safety and Licensing Board Panel established by the Commission. In proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate, the Atomic Safety and Licensing Board shall perform the adjudicatory functions that the Commission determines are appropriate.

(b) The Commission or the Chief Administrative Judge may designate an alternate qualified in the conduct of administrative proceedings, or an alternate having technical or other qualifications, or both, for an Atomic Safety and Licensing Board established under paragraph (a) of this section. If a member of a board becomes unavailable, the Commission or the Chief Administrative Judge may constitute the alternate qualified in the conduct of administrative proceedings, or the alternate having technical or other qualifications, as appropriate, as a member of the board by notifying the alternate who will, as of the date of the notification, serve as a member of the board. If an alternate is unavailable or no alternates have been designated, and a member of a board becomes unavailable, the Commission or Chief Administrative Judge may appoint a member of the Atomic Safety and Licensing Board Panel who is qualified in the conduct of administrative proceedings or a member having technical or other qualifications, as appropriate, as a member of the Atomic Safety and Licensing Board by notifying the appointee who will, as of the date of the notification, serve as a member of the board.

(c) An Atomic Safety and Licensing Board has the duties and may exercise the powers of a presiding officer as granted by § 2.319 and otherwise in this part. Any time when a board is in existence but is not actually in session, any powers which could be exercised by a presiding officer or by the Chief Administrative Judge may be exercised with respect to the proceeding by the chairman of the board having jurisdic-

10 CFR Ch. I (1-1-07 Edition)

tion over it. Two members of an Atomic Safety and Licensing Board constitute a quorum if one of those members is the member qualified in the conduct of administrative proceedings.

§ 2.322 Special assistants to the presiding officer.

(a) In consultation with the Chief Administrative Judge, the presiding officer may, at his or her discretion, appoint personnel from the Atomic Safety and Licensing Board Panel established by the Commission to assist the presiding officer in taking evidence and preparing a suitable record for review. The appointment may occur at any appropriate time during the proceeding but must, at the time of the appointment, be subject to the notice and disqualification provisions as described in § 2.313. The special assistants may function as:

(1) Technical interrogators in their individual fields of expertise. The interrogators shall study the written testimony and sit with the presiding officer to hear the presentation and, where permitted in the proceeding, the cross-examination by the parties of all witnesses on the issues of the interrogators' expertise. The interrogators shall take a leading role in examining the witnesses to ensure that the record is as complete as possible;

(2) Upon consent of all the parties, special masters to hear evidentiary presentations by the parties on specific technical matters, and, upon completion of the presentation of evidence, to prepare a report that would become part of the record. Special masters may rule on evidentiary issues brought before them, in accordance with § 2.333. Appeals from special masters' rulings may be taken to the presiding officer in accordance with procedures established in the presiding officer's order appointing the special master. Special masters' reports are advisory only; the presiding officer retains final authority with respect to the issues heard by the special master;

(3) Alternate Atomic Safety and Licensing Board members to sit with the presiding officer, to participate in the evidentiary sessions on the issue for which the alternate members were designated by examining witnesses, and to

Nuclear Regulatory Commission

§ 2.323

advise the presiding officer of their conclusions through an on-the-record report. This report is advisory only; the presiding officer retains final authority on the issue for which the alternate member was designated; or

(4) Discovery master to rule on the matters specified in § 2.1018(a)(2).

(b) The presiding officer may, as a matter of discretion, informally seek the assistance of members of the Atomic Safety and Licensing Board Panel to brief the presiding officer on the general technical background of subjects involving complex issues that the presiding officer might otherwise have difficulty in quickly grasping. These briefings take place before the hearing on the subject involved and supplement the reading and study undertaken by the presiding officer. They are not subject to the procedures described in § 2.313.

§ 2.323 Motions.

(a) Presentation and disposition. All motions must be addressed to the Commission or other designated presiding officer. A motion must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises. All written motions must be filed with the Secretary and served on all parties to the proceeding.

(b) Form and content. Unless made orally on-the-record during a hearing, or the presiding officer directs otherwise, or under the provisions of subpart N of this part, a motion must be in writing, state with particularity the grounds and the relief sought, be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order. A motion must be rejected if it does not include a certification by the attorney or representative of the moving party that the movant has made a sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion, and that the movant's efforts to resolve the issue(s) have been unsuccessful.

(c) Answers to motions. Within ten (10) days after service of a written motion, or other period as determined by the Secretary, the Assistant Secretary, or the presiding officer, a party may file an answer in support of or in oppo-

sition to the motion, accompanied by affidavits or other evidence. The moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

(d) Accuracy in filing. All parties are obligated, in their filings before the presiding officer and the Commission, to ensure that their arguments and assertions are supported by appropriate and accurate references to legal authority and factual basis, including, as appropriate, citations to the record. Failure to do so may result in appropriate sanctions, including striking a matter from the record or, in extreme circumstances, dismissal of the party.

(e) Motions for reconsideration. Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid. A motion must be filed within ten (10) days of the action for which reconsideration is requested. The motion and any responses to the motion are limited to ten (10) pages.

(f) Referral and certifications to the Commission. (1) If, in the judgment of the presiding officer, prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, or if the presiding officer determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity, the presiding officer may refer the ruling promptly to the Commission. The presiding officer must notify the parties of the referral either by announcement on-the-record or by written notice if the hearing is not in session.

(2) A party may petition the presiding officer to certify an issue to the Commission for early review. The presiding officer shall apply the alternative standards of § 2.341(f) in ruling on the petition for certification. No

§ 2.324

motion for reconsideration of the presiding officer's ruling on a petition for certification will be entertained.

(g) Effect of filing a motion, petition, or certification of question to the Commission. Unless otherwise ordered, neither the filing of a motion, the filing of a petition for certification, nor the certification of a question to the Commission stays the proceeding or extends the time for the performance of any act.

(h) Motions to compel discovery. Parties may file answers to motions to compel discovery in accordance with paragraph (c) of this section. The presiding officer, in his or her discretion, may order that the answer be given orally during a telephone conference or other prehearing conference, rather than in writing. If responses are given over the telephone, the presiding officer shall issue a written order on the motion summarizing the views presented by the parties. This does not preclude the presiding officer from issuing a prior oral ruling on the matter effective at the time of the ruling, if the terms of the ruling are incorporated in the subsequent written order.

§ 2.324 Order of procedure.

The presiding officer or the Commission will designate the order of procedure at a hearing. The proponent of an order will ordinarily open and close.

§ 2.325 Burden of proof.

Unless the presiding officer otherwise orders, the applicant or the proponent of an order has the burden of proof.

§ 2.326 Motions to reopen.

(a) A motion to reopen a closed record to consider additional evidence will not be granted unless the following criteria are satisfied:

(1) The motion must be timely. However, an exceptionally grave issue may be considered in the discretion of the presiding officer even if untimely presented;

(2) The motion must address a significant safety or environmental issue; and

(3) The motion must demonstrate that a materially different result would be or would have been likely had

10 CFR Ch. I (1-1-07 Edition)

the newly proffered evidence been considered initially.

(b) The motion must be accompanied by affidavits that set forth the factual and/or technical bases for the movant's claim that the criteria of paragraph (a) of this section have been satisfied. Affidavits must be given by competent individuals with knowledge of the facts alleged, or by experts in the disciplines appropriate to the issues raised. Evidence contained in affidavits must meet the admissibility standards of this subpart. Each of the criteria must be separately addressed, with a specific explanation of why it has been met. When multiple allegations are involved, the movant must identify with particularity each issue it seeks to litigate and specify the factual and/or technical bases which it believes support the claim that this issue meets the criteria in paragraph (a) of this section.

(c) A motion predicated in whole or in part on the allegations of a confidential informant must identify to the presiding officer the source of the allegations and must request the issuance of an appropriate protective order.

(d) A motion to reopen which relates to a contention not previously in controversy among the parties must also satisfy the requirements for nontimely contentions in § 2.309(c).

§ 2.327 Official recording; transcript.

(a) Recording hearings. A hearing will be recorded stenographically or by other means under the supervision of the presiding officer. If the hearing is recorded on videotape or some other video medium, before an official transcript is prepared under paragraph (b) of this section, that video recording will be considered to constitute the record of events at the hearing.

(b) Official transcript. For each hearing, a transcript will be prepared from the recording made in accordance with paragraph (a) of this section that will be the sole official transcript of the hearing. The transcript will be prepared by an official reporter who may be designated by the Commission or may be a regular employee of the Commission. Except as limited by section 181 of the Act or order of the Commission, the transcript will be available

for inspection in the agency's public records system.

(c) Availability of copies. Copies of transcripts prepared in accordance with paragraph (b) of this section are available to the parties and to the public from the official reporter on payment of the charges fixed therefor. If a hearing is recorded on videotape or other video medium, copies of the recording of each daily session of the hearing may be made available to the parties and to the public from the presiding officer upon payment of a charge specified by the Chief Administrative Judge.

(d) Transcript corrections. Corrections of the official transcript may be made only in the manner provided by this paragraph. Corrections ordered or approved by the presiding officer must be included in the record as an appendix. When so incorporated, the Secretary shall make the necessary physical corrections in the official transcript so that it will incorporate the changes ordered. In making corrections, pages may not be substituted but, to the extent practicable, corrections must be made by running a line through the matter to be changed without obliteration and writing the matter as changed immediately above. If the correction consists of an insertion, it must be added by rider or interlineation as near as possible to the text which is intended to precede and follow it.

§ 2.328 Hearings to be public.

Except as may be requested under section 181 of the Act, all hearings will be public unless otherwise ordered by the Commission.

§ 2.329 Prehearing conference.

(a) Necessity for prehearing conference; timing. The Commission or the presiding officer may, and in the case of a proceeding on an application for a construction permit or an operating license for a facility of a type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility, shall direct the parties or their counsel to appear at a specified time and place for a conference or conferences before trial. A prehearing conference in a proceeding involving a construction per-

mit or operating license for a facility of a type described in §§ 50.21(b) or 50.22 of this chapter must be held within sixty (60) days after discovery has been completed or any other time specified by the Commission or the presiding officer.

(b) Objectives. The following subjects may be discussed, as directed by the Commission or the presiding officer, at the prehearing conference:

- (1) Expediting the disposition of the proceeding;
- (2) Establishing early and continuing control so that the proceeding will not be protracted because of lack of management;
- (3) Discouraging wasteful prehearing activities;
- (4) Improving the quality of the hearing through more thorough preparation, and;
- (5) Facilitating the settlement of the proceeding or any portions of it.

(c) Other matters for consideration. As appropriate for the particular proceeding, a prehearing conference may be held to consider such matters as:

- (1) Simplification, clarification, and specification of the issues;
- (2) The necessity or desirability of amending the pleadings;
- (3) Obtaining stipulations and admissions of fact and the contents and authenticity of documents to avoid unnecessary proof, and advance rulings from the presiding officer on the admissibility of evidence;
- (4) The appropriateness and timing of summary disposition motions under subparts G and L of this part, including appropriate limitations on the page length of motions and responses thereto;
- (5) The control and scheduling of discovery, including orders affecting disclosures and discovery under the discovery provisions in subpart G of this part.
- (6) Identification of witnesses and documents, and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence, including the establishment of reasonable limits on the time allowed for presenting direct and, where permitted, cross-examination evidence;
- (7) The disposition of pending motions;

§ 2.330

(8) Settlement and the use of special procedures to assist in resolving any issues in the proceeding;

(9) The need to adopt special procedures for managing potentially difficult or protracted proceedings that may involve particularly complex issues, including the establishment of separate hearings with respect to any particular issue in the proceeding;

(10) The setting of a hearing schedule, including any appropriate limitations on the scope and time permitted for cross-examination where cross-examination is permitted; and

(11) Other matters that the Commission or presiding officer determines may aid in the just and orderly disposition of the proceeding.

(d) Reports. Prehearing conferences may be reported stenographically or by other means.

(e) Prehearing conference order. The presiding officer shall enter an order that recites the action taken at the conference, the amendments allowed to the pleadings and agreements by the parties, and the issues or matters in controversy to be determined in the proceeding. Any objections to the order must be filed by a party within five (5) days after service of the order. Parties may not file replies to the objections unless the presiding officer so directs. The filing of objections does not stay the decision unless the presiding officer so orders. The presiding officer may revise the order in the light of the objections presented and, as permitted by § 2.319(1), may certify for determination to the Commission any matter raised in the objections the presiding officer finds appropriate. The order controls the subsequent course of the proceeding unless modified for good cause.

§ 2.330 Stipulations.

Apart from any stipulations made during or as a result of a prehearing conference, the parties may stipulate in writing at any stage of the proceeding or orally during the hearing, any relevant fact or the contents or authenticity of any document. These stipulations may be received in evidence. The parties may also stipulate as to the procedure to be followed in the proceeding. These stipulations may, on motion of all parties, be recog-

10 CFR Ch. I (1-1-07 Edition)

nized by the presiding officer to govern the conduct of the proceeding.

§ 2.331 Oral argument before the presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, the presiding officer may allow, and fix a time for, the presentation of oral argument. The presiding officer will impose appropriate limits of time on the argument. The transcript of the argument is part of the record.

§ 2.332 General case scheduling and management.

(a) *Scheduling order.* The presiding officer shall, as soon as practicable after consulting with the parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that establishes limits for the time to file motions, conclude discovery, commence the oral phase of the hearing (if applicable), and take other actions in the proceeding. The scheduling order may also include:

(1) Modifications of the times for disclosures under §§ 2.336 and 2.704 and of the extent of discovery to be permitted;

(2) The date or dates for prehearing conferences; and

(3) Any other matters appropriate in the circumstances of the proceeding.

(b) *Model milestones.* In developing the scheduling order under paragraph (a) of this section, the presiding officer shall utilize the applicable model milestones in Appendix B to this part as a starting point. The presiding officer shall make appropriate modifications based upon all relevant information, including but not limited to, the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, the NRC staff's schedule for completion of its safety and environmental evaluations (paragraph (e) of this section), and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

Nuclear Regulatory Commission

§ 2.334

(c) *Objectives of scheduling order.* The scheduling order must have as its objectives proper case management purposes such as:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control so that the proceeding will not be protracted because of lack of management;

(3) Discouraging wasteful prehearing activities;

(4) Improving the quality of the hearing through more thorough preparation; and

(5) Facilitating the settlement of the proceeding or any portions thereof, including the use of Alternative Dispute Resolution, when and if the presiding officer, upon consultation with the parties, determines that these types of efforts should be pursued.

(d) *Effect of NRC staff's schedule on scheduling order.* In establishing a schedule, the presiding officer shall take into consideration the NRC staff's projected schedule for completion of its safety and environmental evaluations to ensure that the hearing schedule does not adversely impact the staff's ability to complete its reviews in a timely manner. Hearings on safety issues may be commenced before publication of the NRC staff's safety evaluation upon a finding by the presiding officer that commencing the hearings at that time would expedite the proceeding. Where an environmental impact statement (EIS) is involved, hearings on environmental issues addressed in the EIS may not commence before the issuance of the final EIS. In addition, discovery against the NRC staff on safety or environmental issues, respectively, should be suspended until the staff has issued the SER or EIS, unless the presiding officer finds that the commencement of discovery against the NRC staff (as otherwise permitted by the provisions of this part) before the publication of the pertinent document will not adversely affect completion of the document and will expedite the hearing.

[69 FR 2236, Jan. 14, 2004, as amended at 70 FR 20461, Apr. 20, 2005]

§ 2.333 Authority of the presiding officer to regulate procedure in a hearing.

To prevent unnecessary delays or an unnecessarily large record, the presiding officer:

(a) May limit the number of witnesses whose testimony may be cumulative;

(b) May strike argumentative, repetitious, cumulative, unreliable, immaterial, or irrelevant evidence;

(c) Shall require each party or participant who requests permission to conduct cross-examination to file a cross-examination plan for each witness or panel of witnesses the party or participant proposes to cross-examine;

(d) Must ensure that each party or participant permitted to conduct cross-examination conducts its cross-examination in conformance with the party's or participant's cross-examination plan filed with the presiding officer;

(e) May take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(f) May impose such time limitations on arguments as the presiding officer determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

§ 2.334 Implementing hearing schedule for proceeding.

(a) Unless the Commission directs otherwise in a particular proceeding, the presiding officer assigned to the proceeding shall, based on information and projections provided by the parties and the NRC staff, take appropriate action to maintain the hearing schedule established by the presiding officer in accordance with 10 CFR 2.332(a) of this part for the completion of the evidentiary record and, as appropriate, the issuance of its initial decision.

(b) *Modification of hearing schedule.* A hearing schedule may not be modified except upon a finding of good cause by the presiding officer or the Commission. In making such a good cause determination, the presiding officer or the Commission should take into account the following factors, among other things:

§ 2.335

10 CFR Ch. I (1–1–07 Edition)

(1) Whether the requesting party has exercised due diligence to adhere to the schedule;

(2) Whether the requested change is the result of unavoidable circumstances; and

(3) Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.

(c) The presiding officer shall provide written notification to the Commission any time during the course of the proceeding when it appears that there will be a delay of more than forty-five (45) days in meeting any of the dates for major activities in the hearing schedule established by the presiding officer under 10 CFR 2.332(a), or that the completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the hearing schedule established under 10 CFR 2.332(a). The notification must include an explanation of the reasons for the projected delay and a description of the actions, if any, that the presiding officer or the Board proposes to take to avoid or mitigate the delay.

[70 FR 20461, Apr. 20, 2005]

§ 2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part.

(b) A party to an adjudicatory proceeding subject to this part may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception made for the particular proceeding. The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or

a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested. Any other party may file a response by counter affidavit or otherwise.

(c) If, on the basis of the petition, affidavit and any response permitted under paragraph (b) of this section, the presiding officer determines that the petitioning party has not made a *prima facie* showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross-examination or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

(d) If, on the basis of the petition, affidavit and any response provided for in paragraph (b) of this section, the presiding officer determines that the *prima facie* showing required by paragraph (b) of this section has been made, the presiding officer shall, before ruling on the petition, certify the matter directly to the Commission (the matter will be certified to the Commission notwithstanding other provisions on certification in this part) for a determination in the matter of whether the application of the Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding, in the context of this section, should be waived or an exception made. The Commission may, among other things, on the basis of the petition, affidavits, and any response, determine whether the application of the specified rule or regulation

(or provision thereof) should be waived or an exception be made. The Commission may direct further proceedings as it considers appropriate to aid its determination.

(e) Whether or not the procedure in paragraph (b) of this section is available, a party to an initial or renewal licensing proceeding may file a petition for rulemaking under § 2.802.

§ 2.336 General discovery.

(a) Except for proceedings conducted under subparts G and J of this part or as otherwise ordered by the Commission, the presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding, all parties, other than the NRC staff, to any proceeding subject to this part shall, within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose and provide:

(1) The name and, if known, the address and telephone number of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion;

(2)(i) A copy, or a description by category and location, of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions, provided that if only a description is provided of a document or data compilation, a party shall have the right to request copies of that document and/or data compilation, and

(ii) A copy (for which there is no claim of privilege or protected status), or a description by category and location, of all tangible things (*e.g.*, books, publications and treatises) in the possession, custody or control of the party that are relevant to the contention.

(iii) When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, <http://www.nrc.gov>, and/or the NRC Public Document Room, a sufficient disclosure would be the location, the title and a page reference to

the relevant document, data compilation, or tangible thing.

(3) A list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(b) Except for proceedings conducted under subpart J of this part or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding, the NRC staff shall, within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose and/or provide, to the extent available (but excluding those documents for which there is a claim of privilege or protected status):

(1) The application and/or applicant/licensee requests associated with the application or proposed action that is the subject of the proceeding;

(2) NRC correspondence with the applicant or licensee associated with the application or proposed action that is the subject of the proceeding;

(3) All documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that is the subject of the proceeding;

(4) Any NRC staff documents (except those documents for which there is a claim of privilege or protected status) representing the NRC staff's determination on the application or proposal that is the subject of the proceeding; and

(5) A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(c) Each party and the NRC staff shall make its initial disclosures under paragraphs (a) and (b) of this section, based on the information and documentation then reasonably available to it. A party, including the NRC staff, is not excused from making the required

§ 2.337

10 CFR Ch. I (1-1-07 Edition)

disclosures because it has not fully completed its investigation of the case, it challenges the sufficiency of another entity's disclosures, or that another entity has not yet made its disclosures. All disclosures under this section must be accompanied by a certification (by sworn affidavit) that all relevant materials required by this section have been disclosed, and that the disclosures are accurate and complete as of the date of the certification.

(d) The duty of disclosure under this section is continuing, and any information or documents that are subsequently developed or obtained must be disclosed within fourteen (14) days.

(e)(1) The presiding officer may impose sanctions, including dismissal of specific contentions, dismissal of the adjudication, denial or dismissal of the application or proposed action, or the use of the discovery provisions in subpart G of this part against the offending party, for the offending party's continuing unexcused failure to make the disclosures required by this section.

(2) The presiding officer may impose sanctions on a party that fails to provide any document or witness name required to be disclosed under this section, unless the party demonstrates good cause for its failure to make the disclosure required by this section. A sanction that may be imposed by the presiding officer is prohibiting the admission into evidence of documents or testimony of the witness proffered by the offending party in support of its case.

(f) The disclosures required by this section constitute the sole discovery permitted for NRC proceedings under this part unless there is further provision for discovery under the specific subpart under which the hearing will be conducted or unless the Commission provides otherwise in a specific proceeding.

§ 2.337 Evidence at a hearing.

(a) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(b) Objections. An objection to evidence must briefly state the grounds of objection. The transcript must include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on-the-record.

(c) Offer of proof. An offer of proof, made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony, must consist of a statement of the substance of the proffered evidence. If the excluded evidence is in written form, a copy must be marked for identification. Rejected exhibits, adequately marked for identification, must be retained in the record.

(d) Exhibits. A written exhibit will not be received in evidence unless the original and two copies are offered and a copy is furnished to each party, or the parties have been previously furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence.

(e) Official record. An official record of a government agency or entry in an official record may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record and accompanied by a certificate of his custody.

(f) Official notice. (1) The Commission or the presiding officer may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or scientific fact within the knowledge of the Commission as an expert body. Each fact officially noticed under this paragraph must be specified in the record with sufficient particularity to advise the parties of the matters which have been noticed or brought to the attention of the parties before final decision and each party adversely affected by the decision shall be given opportunity to controvert the fact.

(2) If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by filing an appeal from an initial decision or a petition for reconsideration of a final decision. The appeal must clearly and

concisely set forth the information relied upon to controvert the fact.

(g) Proceedings involving applications—(1) Facility construction permits. In a proceeding involving an application for construction permit for a production or utilization facility, the NRC staff shall offer into evidence any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act, any safety evaluation prepared by the NRC staff, and any environmental impact statement prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee.

(2) Other applications where the NRC staff is a party. In a proceeding involving an application for other than a construction permit for a production or utilization facility, the NRC staff shall offer into evidence:

(i) Any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act;

(ii) At the discretion of the NRC staff, a safety evaluation prepared by the NRC staff and/or NRC staff testimony and evidence on the contention/controverted matter prepared in advance of the completion of the safety evaluation;

(iii) Any NRC staff statement of position on the contention/controverted matter provided to the presiding officer under §§ 2.1202(a); and

(iv) Any environmental impact statement or environmental assessment prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee if there is any, but only if there are contentions/controverted matters with respect to the adequacy of the environmental impact statement or environmental assessment.

(3) Other applications where the NRC staff is not a party. In a proceeding involving an application for other than a construction permit for a production or utilization facility, the NRC staff shall offer into evidence, and (with the exception of an ACRS report) provide one or more sponsoring witnesses, for:

(i) Any report submitted by the ACRS in the proceeding in compliance with section 182(b) of the Act;

(ii) At the discretion of the NRC staff, a safety evaluation prepared by the NRC staff and/or NRC staff testimony and evidence on the contention/controverted matter prepared in advance of the completion of the safety evaluation;

(iii) Any NRC staff statement of position on the contention/controverted matter under § 2.1202(a); and

(iv) Any environmental impact statement or environmental assessment prepared in the proceeding under subpart A of part 51 of this chapter by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, or his or her designee if there is any, but only if there are contentions/controverted matters with respect to the adequacy of the environmental impact statement or environmental assessment.

§ 2.338 Settlement of issues; alternative dispute resolution.

The fair and reasonable settlement and resolution of issues proposed for litigation in proceedings subject to this part is encouraged. Parties are encouraged to employ various methods of alternate dispute resolution to address the issues without the need for litigation in proceedings subject to this part.

(a) Availability. The parties shall have the opportunity to submit a proposed settlement of some or all issues to the Commission or presiding officer, as appropriate, or submit a request for alternative dispute resolution under paragraph (b) of this section.

(b) Settlement judge; alternative dispute resolution. (1) The presiding officer, upon joint motion of the parties, may request the Chief Administrative Judge to appoint a Settlement Judge to conduct settlement negotiations or remit the proceeding to alternative dispute resolution as the Commission may provide or to which the parties may agree. The order appointing the Settlement Judge may confine the scope of settlement negotiations to specified issues. The order must direct the Settlement Judge to report to the Chief Administrative Judge at specified time periods.

§ 2.339

10 CFR Ch. I (1-1-07 Edition)

(2) If a Settlement Judge is appointed, the Settlement Judge shall:

(i) Convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement;

(ii) Report to the Chief Administrative Judge describing the status of the settlement negotiations and recommending the termination or continuation of the settlement negotiations; and

(iii) Not discuss the merits of the case with the Chief Administrative Judge or any other person, or appear as a witness in the case.

(3) Settlement negotiations conducted by the Settlement Judge terminate upon the order of the Chief Administrative Judge issued after consultation with the Settlement Judge.

(4) No decision concerning the appointment of a Settlement Judge or the termination of the settlement negotiation is subject to review by, appeal to, or rehearing by the presiding officer or the Commission.

(c) Availability of parties' attorneys or representatives. The presiding officer (or Settlement Judge) may require that the attorney or other representative who is expected to try the case for each party be present and that the parties, or agents having full settlement authority, also be present or available by telephone.

(d) Admissibility in subsequent hearing. No evidence, statements, or conduct in settlement negotiations under this section will be admissible in any subsequent hearing, except by stipulation of the parties. Documents disclosed may not be used in litigation unless obtained through appropriate discovery or subpoena.

(e) Imposition of additional requirements. The presiding officer (or Settlement Judge) may impose on the parties and persons having an interest in the outcome of the adjudication additional requirements as the presiding officer (or Settlement Judge) finds necessary for the fair and efficient resolution of the case.

(f) Effects of ongoing settlement negotiations. The conduct of settlement negotiations does not divest the presiding officer of jurisdiction and does

not automatically stay the proceeding. A hearing must not be unduly delayed because of the conduct of settlement negotiations.

(g) Form. A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives.

(h) Content of settlement agreement. The proposed settlement agreement must contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to contest the validity of the consent order;

(3) A statement that the order has the same force and effect as an order made after full hearing; and

(4) A statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

(i) Approval of settlement agreement. Following issuance of a notice of hearing, a settlement must be approved by the presiding officer or the Commission as appropriate in order to be binding in the proceeding. The presiding officer or Commission may order the adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding. In an enforcement proceeding under subpart B of this part, the presiding officer shall accord due weight to the position of the NRC staff when reviewing the settlement. If approved, the terms of the settlement or compromise must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.341.

§ 2.339 Expedited decisionmaking procedure.

(a) The presiding officer may determine a proceeding by an order after the

conclusion of a hearing without issuing an initial decision, when:

(1) All parties stipulate that the initial decision may be omitted and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains, and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that dispensing with the issuance of the initial decision is in the public interest.

(b) An order entered under paragraph (a) of this section is subject to review by the Commission on its own motion within forty (40) days after its date.

(c) An initial decision may be made effective immediately, subject to review by the Commission on its own motion within thirty (30) days after its date, except as otherwise provided in this chapter, when:

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that it is in the public interest to make the initial decision effective immediately.

(d) The provisions of this section do not apply to an initial decision directing the issuance or amendment of a construction permit or construction authorization, or the issuance of an operating license or provisional operating authorization.

§ 2.340 Initial decision in contested proceedings on applications for facility operating licenses; immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Production or utilization facility operating license. In any initial decision in a contested proceeding on an application for an operating license for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding and on matters

which have been determined to be the issues in the proceeding by the Commission or the presiding officer. Matters not put into controversy by the parties will be examined and decided by the presiding officer only where he or she determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves such examination and decision upon referral of the question by the presiding officer. Depending on the resolution of those matters, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, after making the requisite findings, will issue, deny or appropriately condition the license.

(b) Immediate effectiveness of certain decisions. Except as provided in paragraphs (d) through (g) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision directing the issuance or amendment of a construction permit, a construction authorization, an operating license or a license under 10 CFR Part 72 to store spent fuel in an independent spent fuel storage installation (ISFSI) at a reactor site is effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to review thereof and further decision by the Commission upon petition for review filed by any party under § 2.341 or upon its own motion.

(c) Issuance of license after initial decision. Except as provided in paragraphs (d) through (g) of this section, or as otherwise ordered by the Commission in special circumstances, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or granting of a petition for review, shall issue a construction permit, a construction authorization, an operating license, or a license under 10 CFR part 72 to store spent fuel in an independent spent fuel storage installation at a reactor site, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

§ 2.340

10 CFR Ch. I (1–1–07 Edition)

(d) Immediate effectiveness of initial decisions on a ISFSI and MRS. An initial decision directing the issuance of an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR Part 72 becomes effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards may not issue an initial license for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72 until expressly authorized to do so by the Commission.

(e) [Reserved].

(f) Nuclear power reactor construction permits—(1) Presiding officers. Presiding officers shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. The presiding officer's decisions concerning construction permits are not effective until the Commission actions outlined in paragraph (f)(2) of this section have taken place.

(2) Commission. Within sixty (60) days of the service of any presiding officer decision that would otherwise authorize issuance of a construction permit, the Commission will seek to issue a decision on any stay motions that are timely filed. These motions must be filed as provided by § 2.341. For the purpose of this paragraph, a stay motion is one that seeks to defer the effectiveness of a presiding officer decision beyond the period necessary for the Commission action described herein. If no stay papers are filed, the Commission will, within the same time period (or earlier if possible), analyze the record and construction permit decision below on its own motion and will seek to issue a decision on whether a stay is warranted. However, the Commission will not decide that a stay is warranted without giving the affected parties an opportunity to be heard. The initial decision will be considered stayed pending the Commission's decision. In deciding these stay questions,

the Commission shall employ the procedures set out in § 2.342.

(g) Nuclear power reactor operating licenses—(1) Presiding officers. Presiding officers shall hear and decide all issues that come before them, indicating in their decisions the type of licensing action, if any, which their decision would authorize. A presiding officer's decision authorizing issuance of an operating license may not become effective if it authorizes operating at greater than five (5) percent of rated power until the Commission actions outlined in paragraph (g)(2) of this section have taken place. If a decision authorizes operation up to five (5) percent, the decision is effective and the Director shall issue the appropriate license in accordance with paragraph (c) of this section.

(2) The Commission. (i) Reserving the power to step in at an earlier time, the Commission will, upon receipt of the presiding officer's decision authorizing issuance of an operating license, other than a decision authorizing only fuel loading and low power (up to five (5) percent of rated power) testing, review the matter on its own motion to determine whether to stay the effectiveness of the decision. An operating license decision will be stayed by the Commission, insofar as it authorizes other than fuel loading and low power testing, if it determines that it is in the public interest to do so, based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by operation pending review, and other relevant public interest factors.

(ii) For operating license decisions other than those authorizing only fuel loading and low power testing consistent with the target schedule set forth below, the parties may file brief comments with the Commission pointing out matters which, in their view, pertain to the immediate effectiveness issue. To be considered, these comments must be received within ten (10) days of the presiding officer's decision. However, the Commission may dispense with comments by so advising the parties. An extensive stay will not

Nuclear Regulatory Commission

§2.341

be issued without giving the affected parties an opportunity to be heard.

(iii) The Commission intends to issue a stay decision within thirty (30) days of receipt of the presiding officer's decision. The presiding officer's initial decision will be considered stayed pending the Commission's decision insofar as it may authorize operations other than fuel loading and low power (up to five (5) percent of rated power) testing.

(iv) In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give instructions as to the future handling of the proceeding. Furthermore, the Commission may, in a particular case, determine that compliance with existing regulations and policies may no longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

(h) Lack of prejudice of Commission effectiveness decision. The Commission's effectiveness determination is entirely without prejudice to proceedings under §§2.341 or 2.342.

§2.341 Review of decisions and actions of a presiding officer.

(a)(1) Except for requests for review or appeals of actions under §2.311 or in a proceeding on the high-level radioactive waste repository (which are governed by §2.1015), review of decisions and actions of a presiding officer are treated under this section.

(2) Within forty (40) days after the date of a decision or action by a presiding officer, or within forty (40) days after a petition for review of the decision or action has been served under paragraph (b) of this section, whichever is greater, the Commission may review the decision or action on its own motion, unless the Commission, in its discretion, extends the time for its review.

(b)(1) Within fifteen (15) days after service of a full or partial initial decision by a presiding officer, and within fifteen (15) days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part, a party may file a petition for review with the Commission on the grounds specified in paragraph (b)(4) of this sec-

tion. Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of an agency action.

(2) A petition for review under this paragraph may not be longer than twenty-five (25) pages, and must contain the following:

(i) A concise summary of the decision or action of which review is sought;

(ii) A statement (including record citation) where the matters of fact or law raised in the petition for review were previously raised before the presiding officer and, if they were not, why they could not have been raised;

(iii) A concise statement why in the petitioner's view the decision or action is erroneous; and

(iv) A concise statement why Commission review should be exercised.

(3) Any other party to the proceeding may, within ten (10) days after service of a petition for review, file an answer supporting or opposing Commission review. This answer may not be longer than twenty-five (25) pages and should concisely address the matters in paragraph (b)(2) of this section to the extent appropriate. The petitioning party may file a reply brief within five (5) days of service of any answer. This reply brief may not be longer than five (5) pages.

(4) The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to the following considerations:

(i) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;

(iii) A substantial and important question of law, policy, or discretion has been raised;

(iv) The conduct of the proceeding involved a prejudicial procedural error; or

(v) Any other consideration which the Commission may deem to be in the public interest.

(5) A petition for review will not be granted to the extent that it relies on

§ 2.342

10 CFR Ch. I (1-1-07 Edition)

matters that could have been but were not raised before the presiding officer. A matter raised sua sponte by a presiding officer has been raised before the presiding officer for the purpose of this section.

(6) A petition for review will not be granted as to issues raised before the presiding officer on a pending motion for reconsideration.

(c) (1) If a petition for review is granted, the Commission will issue an order specifying the issues to be reviewed and designating the parties to the review proceeding. The Commission may, in its discretion, decide the matter on the basis of the petition for review or it may specify whether any briefs may be filed.

(2) Unless the Commission orders otherwise, any briefs on review may not exceed thirty (30) pages in length, exclusive of pages containing the table of contents, table of citations, and any addendum containing appropriate exhibits, statutes, or regulations. A brief in excess of ten (10) pages must contain a table of contents with page references and a table of cases (alphabetically arranged), cited statutes, regulations and other authorities, with references to the pages of the brief where they are cited.

(d) Petitions for reconsideration of Commission decisions granting or denying review in whole or in part will not be entertained. A petition for reconsideration of a Commission decision after review may be filed within ten (10) days, but is not necessary for exhaustion of administrative remedies. However, if a petition for reconsideration is filed, the Commission decision is not final until the petition is decided. Any petition for reconsideration will be evaluated against the standard in § 2.323(e).

(e) Neither the filing nor the granting of a petition under this section stays the effect of the decision or action of the presiding officer, unless the Commission orders otherwise.

(f) Interlocutory review. (1) A question certified to the Commission under § 2.319(1), or a ruling referred or issue certified to the Commission under § 2.323(f), will be reviewed if the certification or referral raises significant and novel legal or policy issues, and resolu-

tion of the issues would materially advance the orderly disposition of the proceeding.

(2) The Commission may, in its discretion, grant interlocutory review at the request of a party despite the absence of a referral or certification by the presiding officer. A petition and answer to it must be filed within the times and in the form prescribed in paragraph (b) of this section and must be treated in accordance with the general provisions of this section. The petition for interlocutory review will be granted only if the party demonstrates that the issue for which the party seeks interlocutory review:

(i) Threatens the party adversely affected by it with immediate and serious irreparable impact which, as a practical matter, could not be alleviated through a petition for review of the presiding officer's final decision; or

(ii) Affects the basic structure of the proceeding in a pervasive or unusual manner.

§ 2.342 Stays of decisions.

(a) Within ten (10) days after service of a decision or action of a presiding officer, any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review. This application may be filed with the Commission or the presiding officer, but not both at the same time.

(b) An application for a stay may be no longer than ten (10) pages, exclusive of affidavits, and must contain the following:

(1) A concise summary of the decision or action which is requested to be stayed;

(2) A concise statement of the grounds for stay, with reference to the factors specified in paragraph (e) of this section; and

(3) To the extent that an application for a stay relies on facts subject to dispute, appropriate references to the record or affidavits by knowledgeable persons.

(c) Service of an application for a stay on the other parties must be by the same method, *e.g.*, electronic or facsimile transmission, mail, as the method for filing the application with

Nuclear Regulatory Commission

§ 2.346

the Commission or the presiding officer.

(d) Within ten (10) days after service of an application for a stay under this section, any party may file an answer supporting or opposing the granting of a stay. This answer may not be longer than ten (10) pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section to the extent appropriate. Further replies to answers will not be entertained. Filing of and service of an answer on the other parties must be by the same method, *e.g.*, electronic or facsimile transmission, mail, as the method for filing the application for the stay.

(e) In determining whether to grant or deny an application for a stay, the Commission or presiding officer will consider:

(1) Whether the moving party has made a strong showing that it is likely to prevail on the merits;

(2) Whether the party will be irreparably injured unless a stay is granted;

(3) Whether the granting of a stay would harm other parties; and

(4) Where the public interest lies.

(f) In extraordinary cases, where prompt application is made under this section, the Commission or presiding officer may grant a temporary stay to preserve the status quo without waiting for filing of any answer. The application may be made orally provided the application is promptly confirmed by electronic or facsimile transmission message. Any party applying under this paragraph shall make all reasonable efforts to inform the other parties of the application, orally if made orally.

§ 2.343 Oral argument.

In its discretion, the Commission may allow oral argument upon the request of a party made in a petition for review, brief on review, or upon its own initiative.

§ 2.344 Final decision.

(a) The Commission will ordinarily consider the whole record on review, but may limit the issues to be reviewed to those identified in an order taking review.

(b) The Commission may adopt, modify, or set aside the findings, conclusions and order in the initial decision, and will state the basis of its action. The final decision will be in writing and will include:

(1) A statement of findings and conclusions, with the basis for them on all material issues of fact, law or discretion presented;

(2) All facts officially noticed;

(3) The ruling on each material issue; and

(4) The appropriate ruling, order, or denial of relief, with the effective date.

§ 2.345 Petition for reconsideration.

(a)(1) Any petition for reconsideration of a final decision must be filed by a party within ten (10) days after the date of the decision.

(2) Petitions for reconsideration of Commission decisions are subject to the requirements in § 2.341(d).

(b) A petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid. The petition must state the relief sought. Within ten (10) days after a petition for reconsideration has been served, any other party may file an answer in opposition to or in support of the petition.

(c) Neither the filing nor the granting of the petition stays the decision unless the Commission orders otherwise.

§ 2.346 Authority of the Secretary.

When briefs, motions or other papers are submitted to the Commission itself, as opposed to the officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary is authorized to:

(a) Prescribe procedures for the filing of briefs, motions, or other pleadings, when the schedules differ from those prescribed by the rules of this part or when the rules of this part do not prescribe a schedule;

(b) Rule on motions for extensions of time;

(c) Reject motions, briefs, pleadings, and other documents filed with the

§ 2.347

10 CFR Ch. I (1–1–07 Edition)

Commission later than the time prescribed by the Secretary or the Assistant Secretary or established by an order, rule or regulation of the Commission unless good cause is shown for the late filing;

(d) Prescribe all procedural arrangements relating to any oral argument to be held before the Commission;

(e) Extend the time for the Commission to rule on a petition for review under §§ 2.311 and 2.341;

(f) Extend the time for the Commission to grant review on its own motion under § 2.341;

(g) Direct pleadings improperly filed before the Commission to the appropriate presiding officer for action;

(h) Deny a request for hearings, where the request fails to comply with the Commission's pleading requirements set forth in this part, and fails to set forth an arguable basis for further proceedings;

(i) Refer to the Atomic Safety and Licensing Board Panel or an Administrative Judge, as appropriate requests for hearing not falling under § 2.104, where the requestor is entitled to further proceedings; and

(j) Take action on minor procedural matters.

§ 2.347 **Ex parte communications.**

In any proceeding under this subpart—

(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any *ex parte* communication relevant to the merits of the proceeding.

(b) Commission adjudicatory employees may not request or entertain from any interested person outside the agency or make or knowingly cause to be made to any interested person outside the agency, any *ex parte* communication relevant to the merits of the proceeding.

(c) Any Commission adjudicatory employee who receives, makes, or knowingly causes to be made a communication prohibited by this section shall ensure that it, and any responses to the communication, are promptly served on the parties and placed in the public record of the proceeding. In the case of oral communications, a written

summary must be served and placed in the public record of the proceeding.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Commission or other adjudicatory employee presiding in a proceeding may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(e) (1) The prohibitions of this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.312; or

(ii) Whenever the interested person or Commission adjudicatory employee responsible for the communication has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.312.

(2) The prohibitions of this section cease to apply to *ex parte* communications relevant to the merits of a full or partial initial decision when, in accordance with § 2.341, the time has expired for Commission review of the decision.

(f) The prohibitions in this section do not apply to—

(1) Requests for and the provision of status reports;

(2) Communications specifically permitted by statute or regulation;

(3) Communications made to or by Commission adjudicatory employees in the Office of the General Counsel regarding matters pending before a court or another agency; and

(4) Communications regarding generic issues involving public health and safety or other statutory responsibilities of the agency (*e.g.*, rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

§ 2.348 Separation of functions.

(a) In any proceeding under this subpart, any NRC officer or employee engaged in the performance of any investigative or litigating function in that proceeding or in a factually related proceeding may not participate in or advise a Commission adjudicatory employee about the initial or final decision on any disputed issue in that proceeding, except—

(1) As witness or counsel in the proceeding;

(2) Through a written communication served on all parties and made on-the-record of the proceeding; or

(3) Through an oral communication made both with reasonable prior notice to all parties and with reasonable opportunity for all parties to respond.

(b) The prohibition in paragraph (a) of this section does not apply to—

(1) Communications to or from any Commission adjudicatory employee regarding—

(i) The status of a proceeding;

(ii) Matters for which the communications are specifically permitted by statute or regulation;

(iii) NRC participation in matters pending before a court or another agency; or

(iv) Generic issues involving public health and safety or other statutory responsibilities of the NRC (*e.g.*, rulemakings, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

(2) Communications to or from Commissioners, members of their personal staffs, Commission adjudicatory employees in the Office of the General Counsel, and the Secretary and employees of the Office of the Secretary, regarding—

(i) Initiation or direction of an investigation or initiation of an enforcement proceeding;

(ii) Supervision of NRC staff to ensure compliance with the general policies and procedures of the agency;

(iii) NRC staff priorities and schedules or the allocation of agency resources; or

(iv) General regulatory, scientific, or engineering principles that are useful for an understanding of the issues in a

proceeding and are not contested in the proceeding.

(3) None of the communications permitted by paragraph (b)(2) (i) through (iii) of this section is to be associated by the Commission adjudicatory employee or the NRC officer or employee performing investigative or litigating functions with the resolution of any proceeding under this subpart pending before the NRC.

(c) Any Commission adjudicatory employee who receives a communication prohibited under paragraph (a) of this section shall ensure that it, and any responses to the communication, are placed in the public record of the proceeding and served on the parties. In the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d)(1) The prohibitions in this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.312; or

(ii) Whenever an NRC officer or employee who is or has reasonable cause to believe he or she will be engaged in the performance of an investigative or litigating function or a Commission adjudicatory employee has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.312.

(2) The prohibitions of this section cease to apply to the disputed issues pertinent to a full or partial initial decision when the time has expired for Commission review of the decision in accordance with § 2.341.

(e) Communications to, from, and between Commission adjudicatory employees not prohibited by this section may not serve as a conduit for a communication that otherwise would be prohibited by this section or for an ex parte communication that otherwise would be prohibited by § 2.347.

(f) If an initial or final decision is stated to rest in whole or in part on fact or opinion obtained as a result of a communication authorized by this section, the substance of the communication must be specified in the record of the proceeding and every

§ 2.390

10 CFR Ch. I (1-1-07 Edition)

party must be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert the fact or opinion before the decision is filed, a party may controvert the fact or opinion by filing a petition for review of an initial decision, or a petition for reconsideration of a final decision that clearly and concisely sets forth the information or argument relied on to show the contrary. If appropriate, a party may be afforded the opportunity for cross-examination or to present rebuttal evidence.

§ 2.390 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), (e), and (f) of this section, final NRC records and documents,¹ including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of an NRC determination of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room, except for matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(ii) Are in fact properly classified under that Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), but only if that statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or

refers to particular types or matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

¹Such records and documents do not include handwritten notes and drafts.

Nuclear Regulatory Commission

§2.390

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The procedures in this section must be followed by anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged, or confidential commercial or financial information.

(1) The submitter shall request withholding at the time the document is submitted and shall comply with the document marking and affidavit requirements set forth in this paragraph. The NRC has no obligation to review documents not so marked to determine whether they contain information eligible for withholding under paragraph (a) of this section. Any documents not so marked may be made available to the public at the NRC Web site, <http://www.nrc.gov> or at the NRC Public Document Room.

(i) The submitter shall ensure that the document containing information sought to be withheld is marked as follows:

(A) The top of the first page of the document and the top of each page containing such information must be marked with language substantially similar to: “confidential information submitted under 10 CFR 2.390”; “withhold from public disclosure under 10 CFR 2.390”; or “proprietary” to indicate it contains information the submitter seeks to have withheld.

(B) Each document, or page, as appropriate, containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or at the top if the entire page is affected, the basis (*i.e.*, trade secret, personal privacy, etc.) for proposing that the information be withheld from public disclosure under paragraph (a) of this section.

(ii) The Commission may waive the affidavit requirements on request, or on its own initiative, in circumstances the Commission, in its discretion, deems appropriate. Otherwise, except for personal privacy information, which is not subject to the affidavit requirement, the request for withholding must be accompanied by an affidavit that—

(A) Identifies the document or part sought to be withheld;

(B) Identifies the official position of the person making the affidavit;

(C) Declares the basis for proposing the information be withheld, encompassing considerations set forth in §2.390(a);

(D) Includes a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public; and

(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of §9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of §9.19 of this chapter.

(2) A person who submits commercial or financial information believed to be privileged or confidential or a trade secret shall be on notice that it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to

§ 2.390

10 CFR Ch. I (1-1-07 Edition)

be fully apprised as to the basis for and effects of licensing or rulemaking actions, and that it is within the discretion of the Commission to withhold such information from public disclosure.

(3) The Commission shall determine whether information sought to be withheld from public disclosure under this paragraph:

(i) Is a trade secret or confidential or privileged commercial or financial information; and (ii) If so, should be withheld from public disclosure.

(4) In making the determination required by paragraph (b)(3)(i) of this section, the Commission will consider:

(i) Whether the information has been held in confidence by its owner;

(ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefor;

(iii) Whether the information was transmitted to and received by the Commission in confidence;

(iv) Whether the information is available in public sources;

(v) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(5) If the Commission determines, under paragraph (b)(4) of this section, that the record or document contains trade secrets or privileged or confidential commercial or financial information, the Commission will then determine whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position, and whether the information should be withheld from public disclosure under this paragraph. If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the per-

formance of its functions, it will be returned to the applicant.

(6) Withholding from public inspection does not affect the right, if any, of persons properly and directly concerned to inspect the document. Either before a decision of the Commission on the matter of whether the information should be made publicly available or after a decision has been made that the information should be withheld from public disclosure, the Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection under a protective agreement by contractor personnel or government officials other than NRC officials, by the presiding officer in a proceeding, and under protective order by the parties to a proceeding. *In camera* sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such *in camera* session will be made publicly available.

(c) The Commission either may grant or deny a request for withholding under this section.

(1) If the request is granted, the Commission will notify the submitter of its determination to withhold the information from public disclosure.

(2) If the Commission denies a request for withholding under this section, it will provide the submitter with a statement of reasons for that determination. This decision will specify the date, which will be a reasonable time thereafter, when the document will be available at the NRC Web site, <http://www.nrc.gov>. The document will not be returned to the submitter.

(3) Whenever a submitter desires to withdraw a document from Commission consideration, it may request return of the document, and the document will be returned unless the information—

(i) Forms part of the basis of an official agency decision, including but not limited to, a rulemaking proceeding or licensing activity;

Nuclear Regulatory Commission

§ 2.402

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was revealed, or relied upon, in an open Commission meeting held in accordance with 10 CFR part 9, subpart C;

(iv) Has been requested in a Freedom of Information Act request; or

(v) Has been obtained during the course of an investigation conducted by the NRC Office of Investigations.

(d) The following information is considered commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and is subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection, classified matter protection, or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

(2) Information submitted in confidence to the Commission by a foreign source.

(e) Submitting information to NRC for consideration in connection with NRC licensing or regulatory activities shall be deemed to constitute authority for the NRC to reproduce and distribute sufficient copies to carry out the Commission's official responsibilities.

(f) The presiding officer, if any, or the Commission may, with reference to the NRC records and documents made available pursuant to this section, issue orders consistent with the provisions of this section and § 2.705(c).

Subpart D—Additional Procedures Applicable to Proceedings for the Issuance of Licenses To Construct or Operate Nuclear Power Plants of Duplicate Design at Multiple Sites

SOURCE: 40 FR 2976, Jan. 17, 1975, unless otherwise noted.

§ 2.400 Scope of subpart.

This subpart describes procedures applicable to licensing proceedings which involve the consideration in hearings of a number of applications, filed by one or more applicants pursuant to appendix N of part 52 of this chapter, for licenses to construct and operate nuclear power reactors of essentially the same design to be located at different sites.

[40 FR 2976, Jan. 17, 1975, as amended at 54 FR 15398, Apr. 18, 1989]

§ 2.401 Notice of hearing on applications pursuant to appendix N of part 52 for construction permits.

(a) In the case of applications pursuant to appendix N of part 52 of this chapter for construction permits for nuclear power reactors of the type described in § 50.22 of this chapter, the Secretary will issue notices of hearing pursuant to § 2.104.

(b) The notice of hearing will also state the time and place of the hearings on any separate phase of the proceeding.

[40 FR 2976, Jan. 17, 1975, as amended at 54 FR 15398, Apr. 18, 1989]

§ 2.402 Separate hearings on separate issues; consolidation of proceedings.

(a) In the case of applications under appendix N of part 52 of this chapter for construction permits for nuclear power reactors of a type described in § 50.22 of this chapter, the Commission or the presiding officer may order separate hearings on particular phases of the proceeding, such as matters related to the acceptability of the design of the reactor, in the context of the site parameters postulated for the design or environmental matters.

(b) If a separate hearing is held on a particular phase of the proceeding, the Commission or presiding officers of each affected proceeding may, under § 2.317, consolidate for hearing on that phase two or more proceedings to consider common issues relating to the applications involved in the proceedings, if it finds that this action will be conducive to the proper dispatch of its business and to the ends of justice. In

§ 2.403

specifying the place of this consolidated hearing, due regard will be given to the convenience and necessity of the parties, petitioners for leave to intervene, or the attorneys or representatives of such persons, and the public interest.

[40 FR 2976, Jan. 17, 1975, as amended at 43 FR 17801, Apr. 26, 1978; 54 FR 15398, Apr. 18, 1989; 69 FR 2256, Jan. 14, 2004; 70 FR 61887, Oct. 27, 2005]

§ 2.403 Notice of proposed action on applications for operating licenses pursuant to appendix N of part 52.

In the case of applications pursuant to appendix N of part 52 of this chapter for operating licenses for nuclear power reactors, if the Commission has not found that a hearing is in the public interest, the Director of Nuclear Reactor Regulation will, prior to acting thereon, cause to be published in the FEDERAL REGISTER, pursuant to § 2.105, a notice of proposed action with respect to each application as soon as practicable after the applications have been docketed.

[40 FR 2976, Jan. 17, 1975, as amended at 54 FR 15398, Apr. 18, 1989]

§ 2.404 Hearings on applications for operating licenses pursuant to appendix N of part 52.

If a request for a hearing and/or petition for leave to intervene is filed within the time prescribed in the notice of proposed action on an application for an operating license pursuant to appendix N of part 52 of this chapter with respect to a specific reactor(s) at a specific site and the Commission or an atomic safety and licensing board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel has issued a notice of hearing or other appropriate order, the Commission or the atomic safety and licensing board may order separate hearings on particular phases of the proceeding and/or consolidate for hearing two or more proceedings in the manner described in § 2.402.

[40 FR 2976, Jan. 17, 1975, as amended at 54 FR 15398, Apr. 18, 1989]

10 CFR Ch. I (1–1–07 Edition)

§ 2.405 Initial decisions in consolidated hearings.

At the conclusion of any hearing held under this subpart, the presiding officer will render a partial initial decision that may be appealed under § 2.341. No construction permit or full power operating license will be issued until an initial decision has been issued on all phases of the hearing and all issues under the Act and the National Environmental Policy Act of 1969 appropriate to the proceeding have been resolved.

[69 FR 2256, Jan. 14, 2004]

§ 2.406 Finality of decisions on separate issues.

Notwithstanding any other provision of this chapter, in a proceeding conducted pursuant to this subpart and appendix N of part 52 of this chapter, no matter which has been reserved for consideration in one phase of the hearing shall be considered at another phase of the hearing except on the basis of significant new information that substantially affects the conclusion(s) reached at the other phase or other good cause.

[40 FR 2976, Jan. 17, 1975, as amended at 54 FR 15398, Apr. 18, 1989]

§ 2.407 Applicability of other sections.

The provisions of subparts A and G relating to construction permits and operating licenses apply, respectively, to construction permits and operating licenses subject to this subpart, except as qualified by the provisions of this subpart.

Subpart E—Additional Procedures Applicable to Proceedings for the Issuance of Licenses To Manufacture Nuclear Power Reactors To Be Operated at Sites Not Identified in the License Application and Related Licensing Proceedings

SOURCE: 38 FR 30252, Nov. 2, 1973, unless otherwise noted.

§ 2.500 Scope of subpart.

This subpart prescribes procedures applicable to licensing proceedings

which involve the consideration in separate hearings of an application for a license to manufacture nuclear power reactors pursuant to appendix M of part 52 of this chapter, and applications for construction permits and operating licenses for nuclear power reactors which have been the subject of such an application for a license to manufacture such facilities (manufacturing license).

[40 FR 2976, Jan. 17, 1975, as amended at 54 FR 15398, Apr. 18, 1989]

§2.501 Notice of hearing on application pursuant to appendix M of part 52 for a license to manufacture nuclear power reactors.

(a) In the case of an application pursuant to appendix M of part 52 of this chapter for a license to manufacture nuclear power reactors of the type described in §50.22 of this chapter to be operated at sites not identified in the license application, the Secretary will issue a notice of hearing to be published in the FEDERAL REGISTER at least thirty (30) days prior to the date set for hearing in the notice.¹ The notice shall be issued as soon as practicable after the application has been docketed. The notice will state:

(1) The time, place, and nature of the hearing and/or the prehearing conference;

(2) The authority within which the hearing is to be held;

(3) The matters of fact and law to be considered; and

(4) The time within which answers to the notice shall be filed.

(b) The issues stated in the notice of hearing pursuant to paragraph (a) of this section will not involve consideration of the particular sites at which any of the nuclear power reactors to be manufactured will be located and operated. Except as the Commission determines otherwise, the notice of hearing will state:

(1) That, if the proceeding is a contested proceeding, the presiding officer will consider the following issues:²

(i) Whether the applicant has described the proposed design of, and the site parameters postulated for, the reactor(s), including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(ii) Whether such further technical or design information as may be required to complete the design report and which can reasonably be left for later consideration, will be supplied in a supplement to the design report;

(iii) Whether safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with such features or components;

(iv) Whether on the basis of the foregoing, there is reasonable assurance that (A) such safety questions will be satisfactorily resolved before any of the proposed nuclear power reactors are removed from the manufacturing site, and (B) taking into consideration the site criteria contained in part 100 of this chapter, the proposed reactor(s) can be constructed and operated at sites having characteristics that fall within the site parameters postulated for the design of the reactor(s) without undue risk to the health and safety of the public;

(v) Whether the applicant is technically and financially qualified to design and manufacture the proposed reactor(s);

(vi) Whether the issuance of a license for manufacture of the reactor(s) will be inimical to the common defense and security or to the health and safety of the public; and

(vii) Whether, in accordance with the requirements of subpart A of part 51

¹The thirty (30) day requirement of this paragraph is not applicable to a notice of the time and place of hearing published by the presiding officer after the notice of hearing described in this section has been published.

²Issues (i) and (vi) are the issues pursuant to the Atomic Energy Act of 1954, as amended. Issue (vii) is the issue pursuant to the National Environmental Policy Act of 1969.

§ 2.502

and appendix M of part 52 of this chapter, the license should be issued as proposed.

(2) That, if the proceeding is not a contested proceeding, the presiding officer will determine (i) without conducting a de novo evaluation of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate to support affirmative findings on paragraphs (b)(1)(i) through (v) of this section and a negative finding on paragraph (b)(1)(vi) of this section proposed to be made and the issuance of the license to manufacture proposed by the Director of Nuclear Reactor Regulation, and (ii) whether the review conducted by the Commission pursuant to the National Environmental Policy Act (NEPA) has been adequate.

(3) That, regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 and paragraph 3 of appendix M of part 52 of this chapter,

(i) Determine whether the requirements of section 102(2) (A), (C) and (E) of the National Environmental Policy Act and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and

(iii) Determine whether the manufacturing license should be issued, denied or appropriately conditioned to protect environmental values.

(c) The place of hearing on an application for a manufacturing license will be Washington, DC, or such other location as the Commission deems appropriate.

[38 FR 30252, Nov. 2, 1973, as amended at 39 FR 26279, July 18, 1974; 39 FR 33202, Sept. 16, 1974; 49 FR 9401, Mar. 12, 1984; 54 FR 15398, Apr. 18, 1989; 54 FR 52342, Dec. 21, 1989]

10 CFR Ch. I (1-1-07 Edition)

§ 2.502 Notice of hearing on application for a permit to construct a nuclear power reactor manufactured pursuant to a Commission license issued pursuant to appendix M of part 52 of this chapter at the site at which the reactor is to be operated.

The issues stated for consideration in the notice of hearing on an application for a permit to construct a nuclear power reactor(s) which is the subject of an application for a manufacturing license pursuant to appendix M of part 52 of this chapter, will be those stated in § 2.104(b) and, in addition, whether the site on which the facility is to be operated falls within the postulated site parameters specified in the relevant application for a manufacturing license.

[40 FR 2976, Jan. 17, 1975, as amended at 54 FR 15398, Apr. 18, 1989]

§ 2.503 Finality of decisions on separate issues.

Notwithstanding any other provision of this chapter, no matter which has been resolved at an earlier stage of the licensing process which involves a manufacturing license, a permit to construct a reactor for which a manufacturing license is sought, a license to operate such a reactor, and any amendment to such permit or licenses shall be determined to be at issue in any subsequent state of the licensing process except on the basis of significant new information that substantially affects the conclusion(s) reached at the earlier stage or other good cause.

§ 2.504 Applicability of other sections.

The provisions of subparts A and G relating to construction permits apply to manufacturing licenses subject to this subpart, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, except that § 2.104 (a) and (b) do not apply to manufacturing licenses. The provisions of subparts A and G relating to construction permits and operating licenses apply, respectively, to construction permits and operating licenses subject to this subpart, except as qualified by the provisions of this subpart.

**Subpart F—Additional Procedures
Applicable to Early Partial De-
cisions on Site Suitability
Issues in Connection With an
Application for a Permit To
Construct Certain Utilization
Facilities**

SOURCE: 42 FR 22885, May 5, 1977, unless otherwise noted.

§ 2.600 Scope of subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve an early submittal of site suitability information in accordance with § 2.101(a-1), and a hearing and early partial decision on issues of site suitability, in connection with an application for a permit to construct a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b) (2) or (3) or § 50.22 of this chapter or is a testing facility.

[49 FR 9401, Mar. 12, 1984]

§ 2.601 Applicability of other sections.

The provisions of subparts A and G relating to applications for construction permits and proceedings thereon apply, respectively, to applications and proceedings in accordance with this subpart, except as specifically provided otherwise by the provisions of this subpart.

§ 2.602 Filing fees.

Each application which contains a request for early review of site suitability issues under the procedures of this subpart shall be accompanied by any fee required by § 50.30(e) and part 170 of this chapter.

§ 2.603 Acceptance and docketing of application for early review of site suitability issues.

(a) Each part of an application submitted in accordance with § 2.101(a-1) of this part will be initially treated as a tendered application. If it is determined that any one of the parts as described in § 2.101(a-1) is incomplete and not acceptable for processing, the Director of Nuclear Reactor Regulation will inform the applicant of this determination and the respects in which the

document is deficient. Such a determination of completeness will generally be made within a period of thirty (30) days.

(b)(1) The Director of Nuclear Reactor Regulation will accept for docketing an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b) (2) or (3) or § 50.22 or is a testing facility where part one of the application as described in § 2.101(a-1) is complete. Part one of any application will not be considered complete unless it contains proposed findings as required by § 2.101(a-1)(1)(i) and unless it describes the applicant's site selection process, specifies the extent to which that process involves the consideration of alternative sites, explains the relationship between that process and the application for early review of site suitability issues, and briefly describes the applicant's long-range plans for ultimate development of the site. Upon assignment of a docket number, the procedures in § 2.101(a) (3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application shall be followed.

(2) Additional parts of the application will be docketed upon a determination by the Director of Nuclear Reactor Regulation that they are complete.

(c) If part one of the application is docketed, the Director of Nuclear Reactor Regulation will cause to be published in the FEDERAL REGISTER and send to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of the application which states the purpose of the application, states the location of the proposed site, states that a notice of hearing will be published, requests comments within 120 days or such other time as may be specified on the initiation or outcome of an early site review from Federal, State, and local agencies and interested persons, and in the case of applications filed under section 103 of the Act, states that a person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit

§ 2.604

10 CFR Ch. I (1–1–07 Edition)

such views in accordance with a subsequent notice that will be published in the FEDERAL REGISTER. In the case of a nuclear power reactor, such subsequent notice will be published following submission of the information required by § 50.33a.

[42 FR 22885, May 5, 1977, as amended at 49 FR 9401, Mar. 12, 1984]

§ 2.604 Notice of hearing on application for early review of site suitability issues.

(a) Where an applicant for a construction permit for a utilization facility subject to this subpart requests an early review and hearing and an early partial decision on issues of site suitability pursuant to § 2.101(a-1), the provisions in the notice of hearing setting forth the matters of fact and law to be considered, as required by § 2.104, shall be modified so as to relate only to the site suitability issue or issues under review.

(b) After docketing of part two of the application, as provided in §§ 2.101(a-1) and 2.603, a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. This supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall file a petition for leave to intervene pursuant to § 2.309 within the time prescribed in the notice. This supplementary notice will also provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene as a party under the initial notice of hearing on site suitability issues and who was not dismissed or did not withdraw as a party may continue to participate as a party to the proceeding with respect to the remaining unresolved issues, provided that within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, he or she files a notice of his intent to continue as a party, along with a supporting affidavit identifying the spe-

cific aspect or aspects of the subject matter of the proceeding as to which he or she wishes to continue to participate as a party and setting forth with particularity the basis for his contentions with regard to each aspect or aspects. A party who files a non-timely notice of intent to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i) through (iv) and 2.309(d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

(d) To the maximum extent practicable, the membership of the atomic safety and licensing board designated to preside in the proceeding on the remaining unresolved issues pursuant to the supplemental notice of hearing will be the same as the membership designated to preside in the initial notice of hearing on site suitability issues.

[42 FR 22885, May 5, 1977, as amended by 69 FR 2256, Jan. 14, 2004]

§ 2.605 Additional considerations.

(a) The Commission will not conduct more than one review of site suitability issues with regard to a particular site prior to filing and review of part two of the application described in § 2.101(a-1) of this part.

(b) The Commission, upon its own initiative, or upon the motion of any party to the proceeding filed at least sixty (60) days prior to the date of the commencement of the evidentiary hearing on site suitability issues, may decline to initiate an early hearing or render an early partial decision on any issue or issues of site suitability:

(1) In cases where no partial decision on the relative merits of the proposed site and alternative sites under subpart A of part 51 is requested, upon determination that there is a reasonable likelihood that further review would identify one or more preferable alternative sites and the partial decision on one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the remainder of the information required by § 50.30(f)

of this chapter that would prejudice the later review and decision on such alternative sites; or

(2) In cases where it appears that an early partial decision on any issue or issues of site suitability would not be in the public interest considering (i) the degree of likelihood that any early findings on those issues would retain their validity in later reviews, (ii) the objections, if any, of cognizant state or local government agencies to the conduct of an early review on those issues, and (iii) the possible effect on the public interest and the parties of having an early, if not necessarily conclusive, resolution of those issues.

[42 FR 22885, May 5, 1977, as amended at 49 FR 9401, Mar. 12, 1984]

§ 2.606 Partial decisions on site suitability issues.

(a) The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 shall apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) shall not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10 CFR 50.10(e) and no construction permit may be issued without completion of the full review required by section 102(2) of the National Environmental Policy Act of 1969, as amended, and subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision sua sponte, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit.

(b)(1) A partial decision on one or more site suitability issues pursuant to the applicable provisions of part 50, subpart A of part 51, and part 100 of this chapter issued in accordance with this subpart shall (i) clearly identify the site to which the partial decision applies and (ii) indicate to what extent additional information may be needed and additional review may be required to enable the Commission to determine in accordance with the provisions of the Act and the applicable provisions of the regulations in this chapter whether a construction permit for a fa-

cility to be located on the site identified in the partial decision should be issued or denied.

(2) Following completion of Commission review of the partial initial decision of the Atomic Safety and Licensing Board, after hearing, on the site suitability issues, the partial decision shall remain in effect either for a period of five years or, where the applicant for the construction permit has made timely submittal of the information required to support the application as provided in § 2.101(a-1), until the proceeding for a permit to construct a facility on the site identified in the partial decision has been concluded,³ unless the Commission or Atomic Safety and Licensing Board, upon its own initiative or upon motion by a party to the proceeding, finds that there exists significant new information that substantially affects the earlier conclusions and reopens the hearing record on site suitability issues. Upon good cause shown, the Commission may extend the five year period during which a partial decision shall remain in effect for a reasonable period of time not to exceed one year.

[42 FR 22885, May 5, 1977, as amended at 49 FR 9401, Mar. 12, 1984; 69 FR 2256, Jan. 14, 2004]

Subpart G—Rules for Formal Adjudications

SOURCE: 69 FR 2256, Jan. 14, 2004, unless otherwise noted.

§ 2.700 Scope of subpart G.

The provisions of this subpart apply to and supplement the provisions set forth in subpart C of this part with respect to enforcement proceedings initiated under subpart B of this part unless otherwise agreed to by the parties, proceedings conducted with respect to the initial licensing of a uranium enrichment facility, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits for nuclear power reactors,

³The partial decision on site suitability issues shall be incorporated in the decision regarding issuance of a construction permit to the extent that it serves as a basis for the decision on a specific site issue(s).

§ 2.701

10 CFR Ch. I (1-1-07 Edition)

where the presiding officer by order finds that resolution of the contention necessitates resolution of: issues of material fact relating to the occurrence of a past event, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter, proceedings for initial applications for construction authorization for high-level radioactive waste repository noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings for initial applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area, and any other proceeding as ordered by the Commission. If there is any conflict between the provisions of this subpart and those set forth in subpart C of this part, the provisions of this subpart control.

§ 2.701 Exceptions.

Consistent with 5 U.S.C. 554(a)(4) of the Administrative Procedure Act, the Commission may provide alternative procedures in adjudications to the extent that there is involved the conduct of military or foreign affairs functions.

§ 2.702 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he or she is not available, the Chief Administrative Judge, or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made. However, the officer may not determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it must be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena must be made by delivery of a copy of the subpoena to the person named in it and tendering that person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena must be paid the fees and mileage paid to witnesses in the district courts of the United States by the party at whose instance they appear.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of service does not affect the validity of the service.

(f) On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may:

(1) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or

(2) Condition denial of the motion on just and reasonable terms.

(g) On application and for good cause shown, the Commission will seek judicial enforcement of a subpoena issued to a party and which has not been quashed.

(h) The provisions of paragraphs (a) through (g) of this section are not applicable to the attendance and testimony of the Commissioners or NRC personnel, or to the production of records or documents in their custody.

§ 2.703 Examination by experts.

(a) A party may request the presiding officer to permit a qualified individual who has scientific or technical training

or experience to participate on behalf of that party in the examination and cross-examination of expert witnesses. The presiding officer may permit the individual to participate on behalf of the party in the examination and cross-examination of expert witnesses, upon finding:

(1) That cross-examination by that individual would serve the purpose of furthering the conduct of the proceeding;

(2) That the individual is qualified by scientific or technical training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination or cross-examination;

(3) That the individual has read any written testimony on which he intends to examine or cross-examine and any documents to be used or referred to in the course of the examination or cross-examination; and

(4) That the individual has prepared himself to conduct a meaningful and expeditious examination or cross-examination, and has submitted a cross-examination plan in accordance with § 2.711(c).

(b) Examination or cross-examination conducted under this section must be limited to areas within the expertise of the individual conducting the examination or cross-examination. The party on behalf of whom this examination or cross-examination is conducted and his or her attorney is responsible for the conduct of examination or cross-examination by such individuals.

§ 2.704 Discovery—required disclosures.

(a) Initial disclosures. Except to the extent otherwise stipulated or directed by order of the presiding officer or the Commission, a party other than the NRC staff shall, without awaiting a discovery request, provide to other parties:

(1) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed issues alleged with particularity in the pleadings, identifying the subjects of the information; and

(2) A copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed issues alleged with particularity in the pleadings. When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, <http://www.nrc.gov>, and/or the NRC Public Document Room, a sufficient disclosure would be the location, the title and a page reference to the relevant document, data compilation, or tangible thing;

(3) Unless otherwise stipulated or directed by the presiding officer, these disclosures must be made within forty-five (45) days after the issuance of a prehearing conference order following the initial prehearing conference specified in § 2.329. A party shall make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully completed its investigation of the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

(b) Disclosure of expert testimony. (1) In addition to the disclosures required by paragraph (a) of this section, a party other than the NRC staff shall disclose to other parties the identity of any person who may be used at trial to present evidence under § 2.711.

(2) Except in proceedings with pre-filed written testimony, or as otherwise stipulated or directed by the presiding officer, this disclosure must be accompanied by a written report prepared and signed by the witness, containing: A complete statement of all opinions to be expressed and the basis and reasons therefor; the data and other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; and a listing of any other cases in which the witness has testified as an expert at trial

or by deposition within the preceding four (4) years.

(3) These disclosures must be made at the times and in the sequence directed by the presiding officer. In the absence of other directions from the presiding officer, or stipulation by the parties, the disclosures must be made at least ninety (90) days before the hearing commencement date or the date the matter is to be presented for hearing. If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under paragraph (b)(2) of this section, the disclosures must be made within thirty (30) days after the disclosure made by the other party. The parties shall supplement these disclosures when required under paragraph (e) of this section.

(c) Pretrial disclosures. (1) In addition to the disclosures required in the preceding paragraphs, a party other than the NRC staff shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(i) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(ii) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, when available, a transcript of the pertinent portions of the deposition testimony; and

(iii) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(2) Unless otherwise directed by the presiding officer or the Commission, these disclosures must be made at least thirty (30) days before commencement of the hearing at which the issue is to be presented.

(3) A party may object to the admissibility of documents identified under paragraph (c) of this section. A list of those objections must be served and filed within fourteen (14) days after service of the disclosures required by

paragraphs (c)(1) and (2) of this section, unless a different time is specified by the presiding officer or the Commission. Objections not so disclosed, other than objections as to a document's admissibility under § 2.711(e), are waived unless excused by the presiding officer or Commission for good cause shown.

(d) Form of disclosures; filing. Unless otherwise directed by order of the presiding officer or the Commission, all disclosures under paragraphs (a) through (c) of this section must be made in writing, signed, served, and promptly filed with the presiding officer or the Commission.

(e) Supplementation of responses. A party who has made a disclosure under this section is under a duty to supplement or correct the disclosure to include information thereafter acquired if ordered by the presiding officer or in the following circumstances:

(1) A party is under a duty to supplement at appropriate intervals its disclosures under paragraph (a) of this section within a reasonable time after a party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) With respect to testimony of an expert from whom a report is required under paragraph (b) of this section, the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information must be disclosed by the time the party's disclosures under § 2.704(c) are due.

§ 2.705 Discovery—additional methods.

(a) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written interrogatories (§ 2.706); interrogatories to parties (§ 2.706); production of documents or things or permission to enter upon land or other property, for inspection and other purposes (§ 2.707); and requests for admission (§ 2.708).

(b) Scope of discovery. Unless otherwise limited by order of the presiding

officer in accordance with this section, the scope of discovery is as follows:

(1) In general. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. When any book, document, or other tangible thing sought is reasonably available from another source, such as at the NRC Web site, <http://www.nrc.gov>, and/or the NRC Public Document Room, sufficient response to an interrogatory on materials would be the location, the title and a page reference to the relevant book, document, or tangible thing. In a proceeding on an application for a construction permit or an operating license for a production or utilization facility, discovery begins only after the prehearing conference and relates only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. In such a proceeding, discovery may not take place after the beginning of the prehearing conference held under §2.329 except upon leave of the presiding officer upon good cause shown. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. Upon his or her own initiative after reasonable notice or in response to a motion filed under paragraph (c) of this section, the presiding officer may alter the limits in these rules on the number of depositions and interrogatories, and may also limit the length of depositions under §2.706 and the number of requests under §§2.707 and 2.708. The presiding officer shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if he or she determines that:

(i) The discovery sought is unreasonably cumulative or duplicative, or is

obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or

(iii) The burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the proceeding, the parties' resources, the importance of the issue in the proceeding, and the importance of the proposed discovery in resolving the issues.

(3) Trial preparation materials. A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of this case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney for a party concerning the proceeding.

(4) Claims of privilege or protection of trial preparation materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. Identification of these privileged materials must be made within the time provided for disclosure of the materials, unless otherwise extended by order of the presiding officer or the Commission.

(5) Nature of interrogatories. Interrogatories may seek to elicit factual information reasonably related to a party's position in the proceeding, including data used, assumptions made, and analyses performed by the party. Interrogatories may not be addressed to, or be construed to require:

(i) Reasons for not using alternative data, assumptions, and analyses where the alternative data, assumptions, and analyses were not relied on in developing the party's position; or

(ii) Performance of additional research or analytical work beyond that which is needed to support the party's position on any particular matter.

(c) Protective order. (1) Upon motion by a party or the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the presiding officer, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(iv) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(v) That discovery be conducted with no one present except persons designated by the presiding officer;

(vi) That, subject to the provisions of §§2.709 and 2.390, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(vii) That studies and evaluations not be prepared.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that

any party or person provide or permit discovery.

(d) Sequence and timing of discovery. Except when authorized under these rules or by order of the presiding officer, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by paragraph (f) of this section, nor may a party seek discovery after the time limit established in the proceeding for the conclusion of discovery. Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

(e) Supplementation of responses. A party who responded to a request for discovery with a response is under a duty to supplement or correct the response to include information thereafter acquired if ordered by the presiding officer or, with respect to a response to an interrogatory, request for production, or request for admission, within a reasonable time after a party learns that the response is in some material respect incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Meeting of parties; planning for discovery. Except when otherwise ordered, the parties shall, as soon as practicable and in any event no more than thirty (30) days after the issuance of a prehearing conference order following the initial prehearing conference specified in §2.329, meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the proceeding or any portion thereof, to make or arrange for the disclosures required by §2.704, and to develop a proposed discovery plan.

(1) The plan must indicate the parties' views and proposals concerning:

(i) What changes should be made in the timing, form, or requirement for disclosures under §2.704, including a

Nuclear Regulatory Commission

§ 2.705

statement as to when disclosures under § 2.704(a)(1) were made or will be made;

(ii) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(iii) What changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and

(iv) Any other orders that should be entered by the presiding officer under paragraph (c) of this section.

(2) The attorneys of record and all unrepresented parties that have appeared in the proceeding are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the presiding officer within ten (10) days after the meeting a written report outlining the plan.

(g) Signing of disclosures, discovery requests, responses, and objections. (1) Every disclosure made in accordance with § 2.704 must be signed by at least one attorney of record in the attorney's individual name, whose address must be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name, whose address must be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(i) Consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(3) If a request, response, or objection is not signed, it must be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(4) If a certification is made in violation of the rule without substantial justification, the presiding officer, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may, in appropriate circumstances, include termination of that person's right to participate in the proceeding.

(h) Motion to compel discovery. (1) If a deponent or party upon whom a request for production of documents or answers to interrogatories is served fails to respond or objects to the request, or any part thereof, or fails to permit inspection as requested, the deposing party or the party submitting the request may move the presiding officer, within ten (10) days after the date of the response or after failure of a party to respond to the request, for an order compelling a response or inspection in accordance with the request. The motion must set forth the nature of the questions or the request, the response or objection of the party upon whom the request was served, and arguments in support of the motion. The motion must be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the presiding officer. Failure to answer or respond may not be excused on the ground that the discovery

§ 2.706

10 CFR Ch. I (1-1-07 Edition)

sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section. For purposes of this paragraph, an evasive or incomplete answer or response will be treated as a failure to answer or respond.

(2) In ruling on a motion made under this section, the presiding officer may issue a protective order under paragraph (c) of this section.

(3) This section does not preclude an independent request for issuance of a subpoena directed to a person not a party for production of documents and things. This section does not apply to requests for the testimony or interrogatories of the NRC staff under § 2.709(a), or the production of NRC documents under §§ 2.709(b) or § 2.390, except for paragraphs (c) and (e) of this section.

§ 2.706 Depositions upon oral examination and written interrogatories; interrogatories to parties.

(a) Depositions upon oral examination and written interrogatories. (1) Any party desiring to take the testimony of any party or other person by deposition on oral examination or written interrogatories shall, without leave of the Commission or the presiding officer, give reasonable notice in writing to every other party, to the person to be examined and to the presiding officer of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or the class or group to which he belongs; the matters upon which each person will be examined and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(2) [Reserved]

(3) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of the United States, or a person author-

ized to administer oaths designated by the Commission.

(4) Before any questioning, the deponent shall either be sworn or affirm the truthfulness of his or her answers. Examination and cross-examination must proceed as at a hearing. Each question propounded must be recorded and the answer taken down in the words of the witness. Objections on questions of evidence must be noted in short form without the arguments. The officer may not decide on the competency, materiality, or relevancy of evidence but must record the evidence subject to objection. Objections on questions of evidence not made before the officer will not be considered waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(5) When the testimony is fully transcribed, the deposition must be submitted to the deponent for examination and signature unless he or she is ill, cannot be found, or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly forward the deposition by registered mail to the Commission.

(6) Where the deposition is to be taken on written interrogatories, the party taking the deposition shall serve a copy of the interrogatories, showing each interrogatory separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within ten (10) days after service, any other party may serve cross-interrogatories. The interrogatories, cross-interrogatories, and answers must be recorded and signed, and the deposition certified, returned, and filed as in the case of a deposition on oral examination.

(7) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts. A party does not make a person his or her own witness for any purpose by taking his deposition.

Nuclear Regulatory Commission

§2.708

(8) A deponent whose deposition is taken and the officer taking a deposition are entitled to the same fees as are paid for like services in the district courts of the United States. The fees must be paid by the party at whose instance the deposition is taken.

(9) The witness may be accompanied, represented, and advised by legal counsel.

(10) The provisions of paragraphs (a)(1) through (a)(9) of this section are not applicable to NRC personnel. Testimony of NRC personnel by oral examination and written interrogatories addressed to NRC personnel are subject to the provisions of §2.709.

(b) Interrogatories to parties. (1) Any party may serve upon any other party (other than the NRC staff) written interrogatories to be answered in writing by the party served, or if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A copy of the interrogatories, answers, and all related pleadings must be filed with the Secretary of the Commission, and must be served on the presiding officer and all parties to the proceeding.

(2) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. The answers must be signed by the person making them, and the objections by the attorney making them. The party upon whom the interrogatories were served shall serve a copy of the answers and objections upon all parties to the proceeding within fourteen (14) days after service of the interrogatories, or within such shorter or longer period as the presiding officer may allow. Answers may be used in the same manner as depositions (see §2.706(a)(7)).

§2.707 Production of documents and things; entry upon land for inspections and other purposes.

(a) Request for discovery. Any party may serve on any other party a request to:

(1) Produce and permit the party making the request, or a person acting

on his or her behalf, to inspect and copy any designated documents, or to inspect and copy, test, or sample any tangible things which are within the scope of §2.704 and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of §2.704.

(b) Service. The request may be served on any party without leave of the Commission or the presiding officer. Except as otherwise provided in §2.704, the request may be served after the proceeding is set for hearing.

(c) Contents. The request must identify the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request must specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) Response. The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after the service of the request. The response must state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection must be stated. If objection is made to part of an item or category, the part must be specified.

(e) NRC records and documents. The provisions of paragraphs (a) through (d) of this section do not apply to the production for inspection and copying or photographing of NRC records or documents. Production of NRC records or documents is subject to the provisions of §§2.709 and 2.390.

§2.708 Admissions.

(a) Apart from any admissions made during or as a result of a prehearing conference, at any time after his or her answer has been filed, a party may file a written request for the admission of

§ 2.709

10 CFR Ch. I (1-1-07 Edition)

the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact. A copy of the document for which an admission of genuineness and authenticity is requested must be delivered with the request unless a copy has already been furnished.

(b)(1) Each requested admission is considered made unless, within a time designated by the presiding officer or the Commission, and not less than ten (10) days after service of the request or such further time as may be allowed on motion, the party to whom the request is directed serves on the requesting party either:

(i) A sworn statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why he can neither truthfully admit nor deny them; or

(ii) Written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part.

(2) Answers on matters to which such objections are made may be deferred until the objections are determined. If written objections are made to only a part of a request, the remainder of the request must be answered within the time designated.

(c) Admissions obtained under the procedure in this section may be used in evidence to the same extent and subject to the same objections as other admissions.

§ 2.709 Discovery against NRC staff.

(a)(1) In a proceeding in which the NRC staff is a party, the NRC staff will make available one or more witnesses, designated by the Executive Director for Operations or a delegee of the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, that is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the presiding officer, by subpoena or otherwise. However, the presiding offi-

cer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations or a delegee of the Executive Director for Operations, require the attendance and testimony of named NRC personnel.

(2) A party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts, as designated by the Executive Director for Operations, or a delegee of the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the NRC staff answer the interrogatories.

(3) A deposition of a particular named NRC employee or answer to interrogatories by NRC personnel under paragraphs (a)(1) and (2) of this section may not be required before the matters in controversy in the proceeding have been identified by order of the Commission or the presiding officer, or after the beginning of the prehearing conference held in accordance with § 2.329, except upon leave of the presiding officer for good cause shown.

(4) The provisions of § 2.704(c) and (e) apply to interrogatories served under this paragraph.

(5) Records or documents in the custody of the Commissioners and NRC personnel are available for inspection and copying or photographing under paragraph (b) of this section and § 2.390.

(b) A request for the production of an NRC record or document not available under § 2.390 by a party to an initial licensing proceeding may be served on the Executive Director for Operations or a delegee of the Executive Director for Operations, without leave of the Commission or the presiding officer. The request must identify the records or documents requested, either by individual item or by category, describe each item or category with reasonable particularity, and state why that

record or document is relevant to the proceeding.

(c) If the Executive Director for Operations, or a delegee of the Executive Director for Operations, objects to producing a requested record or document on the ground that it is not relevant or it is exempted from disclosure under §2.390 and the disclosure is not necessary to a proper decision in the proceeding or the document or the information therein is reasonably obtainable from another source, the Executive Director for Operations, or a delegee of the Executive Director for Operations, shall advise the requesting party.

(d) If the Executive Director for Operations, or a delegee of the Executive Director for Operations, objects to producing a record or document, the requesting party may apply to the presiding officer, in writing, to compel production of that record or document. The application must set forth the relevancy of the record or document to the issues in the proceeding. The application will be processed as a motion in accordance with §2.323 (a) through (d). The record or document covered by the application must be produced for the *in camera* inspection of the presiding officer, exclusively, if requested by the presiding officer and only to the extent necessary to determine:

- (1) The relevancy of that record or document;
- (2) Whether the document is exempt from disclosure under §2.390;
- (3) Whether the disclosure is necessary to a proper decision in the proceeding; and
- (4) Whether the document or the information therein is reasonably obtainable from another source.

(e) Upon a determination by the presiding officer that the requesting party has demonstrated the relevancy of the record or document and that its production is not exempt from disclosure under §2.390 or that, if exempt, its disclosure is necessary to a proper decision in the proceeding, and the document or the information therein is not reasonably obtainable from another source, the presiding officer shall order the Executive Director for Operations, or a delegee of the Executive Director

for Operations, to produce the document.

(f) In the case of requested documents and records (including Safeguards Information referred to in sections 147 and 181 of the Atomic Energy Act, as amended) exempt from disclosure under §2.390, but whose disclosure is found by the presiding officer to be necessary to a proper decision in the proceeding, any order to the Executive Director for Operations or a delegee of the Executive Director for Operations, to produce the document or records (or any other order issued ordering production of the document or records) may contain any protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to parties in the proceeding, to interested States and other governmental entities participating under §2.315(c), and to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the Commission staff, it must also be protected according to the requirements of §73.21 of this chapter. The presiding officer may also prescribe additional procedures to effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed under §2.205. For the purpose of imposing the criminal penalties contained in Section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information is considered to be an order issued under Section 161.b of the Atomic Energy Act.

(g) A ruling by the presiding officer or the Commission for the production of a record or document will specify

§2.710

10 CFR Ch. I (1-1-07 Edition)

the time, place, and manner of production.

(h) A request under this section may not be made or entertained before the matters in controversy have been identified by the Commission or the presiding officer, or after the beginning of the prehearing conference held under §2.329 except upon leave of the presiding officer for good cause shown.

(i) The provisions of §2.705 (c) and (e) apply to production of NRC records and documents under this section.

§2.710 Motions for summary disposition.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. Summary disposition motions must be filed no later than twenty (20) days after the close of discovery. The moving party shall attach to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall attach to any answer opposing the motion a separate, short, and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto will be entertained.

(b) Affidavits must set forth the facts that would be admissible in evidence, and must demonstrate affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The presiding officer may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. When a

motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of his answer. The answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no answer is filed, the decision sought, if appropriate, must be rendered.

(c) Should it appear from the affidavits of a party opposing the motion that he or she cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the presiding officer may refuse the application for summary decision, order a continuance to permit affidavits to be obtained, or make an order as is appropriate. A determination to that effect must be made a matter of record.

(d)(1) The presiding officer need not consider a motion for summary disposition unless its resolution will serve to expedite the proceeding if the motion is granted. The presiding officer may dismiss summarily or hold in abeyance untimely motions filed shortly before the hearing commences or during the hearing if the other parties or the presiding officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion and thereby extend the proceeding.

(2) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction permit for a production or utilization facility, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the permit shall be issued.

(e) The presiding officer shall issue an order no later than forty (40) days after any responses to the summary disposition motion are filed, indicating

Nuclear Regulatory Commission

§2.711

whether the motion is granted, or denied, and the bases therefore.

§2.711 Evidence.

(a) General. Every party to a proceeding has the right to present oral or documentary evidence and rebuttal evidence and to conduct, in accordance with an approved cross-examination plan that contains the information specified in paragraph (c) of this section, any cross-examination required for full and true disclosure of the facts.

(b) Testimony. The parties shall submit direct testimony of witnesses in written form, unless otherwise ordered by the presiding officer on the basis of objections presented. In any proceeding in which advance written testimony is to be used, each party shall serve copies of its proposed written testimony on every other party at least fifteen (15) days in advance of the session of the hearing at which its testimony is to be presented. The presiding officer may permit the introduction of written testimony not so served, either with the consent of all parties present or after they have had a reasonable opportunity to examine it. Written testimony must be incorporated into the transcript of the record as if read or, in the discretion of the presiding officer, may be offered and admitted in evidence as an exhibit.

(c) Cross-examination. (1) The presiding officer shall require a party seeking an opportunity to cross-examine to request permission to do so in accordance with a schedule established by the presiding officer. A request to conduct cross-examination must be accompanied by a cross-examination plan containing the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination.

(2) The cross-examination plan may be submitted only to the presiding officer and must be kept by the presiding officer in confidence until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide each cross-examination

plan to the Commission's Secretary for inclusion in the official record of the proceeding.

(d) Non-applicability to subpart B proceedings. Paragraphs (b) and (c) of this section do not apply to proceedings initiated under subpart B of this part for modification, suspension, or revocation of a license or to proceedings for imposition of a civil penalty, unless otherwise directed by the presiding officer.

(e) Admissibility. Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(f) Objections. An objection to evidence must briefly state the grounds of objection. The transcript must include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on-the-record.

(g) Offer of proof. An offer of proof, made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony, must consist of a statement of the substance of the proffered evidence. If the excluded evidence is in written form, a copy must be marked for identification. Rejected exhibits, adequately marked for identification, must be retained in the record.

(h) Exhibits. A written exhibit will not be received in evidence unless the original and two copies are offered and a copy is furnished to each party, or the parties have been previously furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence.

(i) Official record. An official record of a government agency or entry in an official record may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record and accompanied by a certificate of his custody.

(j) Official notice. (1) The Commission or the presiding officer may take official notice of any fact of which a court of the United States may take judicial notice or of any technical or

§2.712

scientific fact within the knowledge of the Commission as an expert body. Each fact officially noticed under this paragraph must be specified in the record with sufficient particularity to advise the parties of the matters which have been noticed or brought to the attention of the parties before final decision and each party adversely affected by the decision shall be given opportunity to controvert the fact.

(2) If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by filing an appeal from an initial decision or a petition for reconsideration of a final decision. The appeal must clearly and concisely set forth the information relied upon to controvert the fact.

§2.712 Proposed findings and conclusions.

(a) Any party to a proceeding may, or if directed by the presiding officer shall, file proposed findings of fact and conclusions of law, briefs and a proposed form of order or decision within the time provided by this section, except as otherwise ordered by the presiding officer:

(1) The party who has the burden of proof shall, within thirty (30) days after the record is closed, file proposed findings of fact and conclusions of law and briefs, and a proposed form of order or decision.

(2) Other parties may file proposed findings, conclusions of law and briefs within forty (40) days after the record is closed.

(3) A party who has the burden of proof may reply within five (5) days after filing of proposed findings and conclusions of law and briefs by other parties.

(b) Failure to file proposed findings of fact, conclusions of law, or briefs when directed to do so may be considered a default, and an order or initial decision may be entered accordingly.

(c) Proposed findings of fact must be clearly and concisely set forth in numbered paragraphs and must be confined to the material issues of fact presented on-the-record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Pro-

10 CFR Ch. I (1-1-07 Edition)

posed conclusions of law must be set forth in numbered paragraphs as to all material issues of law or discretion presented on-the-record. An intervenor's proposed findings of fact and conclusions of law must be confined to issues which that party placed in controversy or sought to place in controversy in the proceeding.

§2.713 Initial decision and its effect.

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

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

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

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

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

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

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

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

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

Subpart H—Rulemaking

§ 2.800 Scope of rulemaking.

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

[35 FR 11459, July 17, 1970]

§ 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person.

§ 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or rescind any regulation. The petition should be addressed to the Secretary, Attention: Rulemakings and Adjudications Staff, and sent either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by facsimile; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, e-mail, or CD-ROM. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/eie.html>, by calling (301) 415-6030, by e-mail to EIE@nrc.gov, or by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of non-public information.

(b) A prospective petitioner may consult with the NRC before filing a petition for rulemaking by writing to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. A prospective petitioner also may telephone the Rules and Directives Branch on (301)

415-7163, or toll free on (800) 368-5642, or send e-mail to NRCREP@nrc.gov.

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

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

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

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

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

(c) Each petition filed under this section shall:

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

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

(3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.

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

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is

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

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

(g) The Director, Division of Administrative Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room.

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

§ 2.803 Determination of petition.

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

§ 2.804 Notice of proposed rulemaking.

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

(b) The notice will include:

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

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

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

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

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

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

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

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

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

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary,

Nuclear Regulatory Commission

§ 2.809

or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

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

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

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

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

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

§ 2.805 Participation by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of § 2.804(a), the Commission will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.

(b) The Commission may hold informal hearings at which interested persons may be heard, adopting procedures which in its judgment will best serve the purpose of the hearing.

[27 FR 377, Jan. 13, 1962, as amended at 50 FR 13010, Apr. 2, 1985; 50 FR 15865, Apr. 22, 1985]

§ 2.806 Commission action.

The Commission will incorporate in the notice of adoption of a regulation a concise general statement of its basis and purpose, and will cause the notice and regulation to be published in the FEDERAL REGISTER or served upon affected persons.

§ 2.807 Effective date.

The notice of adoption of a regulation will specify the effective date. Publication or service of the notice and regulation, other than one granting or recognizing exemptions or relieving from restrictions, will be made not less than thirty (30) days prior to the effective date unless the Commission directs otherwise on good cause found and published in the notice of rule making.

§ 2.808 Authority of the Secretary to rule on procedural matters.

When briefs, motions or other papers listed herein are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary are authorized to:

(a) Prescribe schedules for the filing of statements, information, briefs, motions, responses or other pleadings, where such schedules may differ from those elsewhere prescribed in these rules or where these rules do not prescribe a schedule;

(b) Rule on motions for extensions of time;

(c) Reject motions, briefs, pleadings, and other documents filed with the Commission later than the time prescribed by the Secretary or the Assistant Secretary or established by an order, rule, or regulation of the Commission unless good cause is shown for the late filing; and

(d) Prescribe all procedural arrangements relating to any oral argument to be held before the Commission.

[39 FR 24219, July 1, 1974]

§ 2.809 Participation by the Advisory Committee on Reactor Safeguards.

(a) In its advisory capacity to the Commission, the ACRS may recommend that the Commission initiate

§2.810

rulemaking in a particular area. The Commission will respond to such rule-making recommendation in writing within 90 days, noting its intent to implement, study, or defer action on the recommendation. In the event the Commission decides not to accept or decides to defer action on the recommendation, it will give its reasons for doing so. Both the ACRS recommendation and the Commission's response will be made available at the NRC Web site, <http://www.nrc.gov>, following transmittal of the Commission's response to the ACRS.

(b) When a rule involving nuclear safety matters within the purview of the ACRS is under development by the NRC Staff, the Staff will ensure that the ACRS is given an opportunity to provide advice at appropriate stages and to identify issues to be considered during rulemaking hearings.

[46 FR 22358, Apr. 17, 1981, as amended at 64 FR 48949, Sept. 9, 1999]

§2.810 NRC size standards.

The NRC shall use the size standards contained in this section to determine whether a licensee qualifies as a small entity in its regulatory programs.

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

10 CFR Ch. I (1–1–07 Edition)

(e) For the purposes of this section, the NRC shall use the Small Business Administration definition of receipts (13 CFR 121.402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

(f) Whenever appropriate in the interest of administering statutes and regulations within its jurisdiction, it is the practice of the NRC to answer inquiries from small entities concerning information on and advice about compliance with the statutes and regulations that affect them. To help small entities obtain information quickly, the NRC has established a toll-free telephone number at 1-800-368-5642.

[60 FR 18346, Apr. 11, 1995, as amended at 62 FR 26220, May 13, 1997]

Subpart I—Special Procedures Applicable to Adjudicatory Proceedings Involving Restricted Data and/or National Security Information

SOURCE: 41 FR 53329, Dec. 6, 1976, unless otherwise noted.

§2.900 Purpose.

This subpart is issued pursuant to section 181 of the Atomic Energy Act of 1954, as amended, and section 201 of the Energy Reorganization Act of 1974, as amended, to provide such procedures in proceedings subject to this part as will effectively safeguard and prevent disclosure of Restricted Data and National Security Information to unauthorized persons, with minimum impairment of procedural rights.

§2.901 Scope of subpart I.

This subpart applies, as applicable, to all proceedings under subparts G, J, K, L, M, and N of this part.

[69 FR 2264, Jan. 14, 2004]

§2.902 Definitions.

As used in this subpart:

(a) *Government agency* means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America, which is an instrumentality of the United States, or any

Nuclear Regulatory Commission

§ 2.905

board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(b) *Interested party* means a party having an interest in the issue or issues to which particular Restricted Data or National Security Information is relevant. Normally the interest of a party in an issue may be determined by examination of the notice of hearing, the answers and replies.

(c) The phrase *introduced into a proceeding* refers to the introduction or incorporation of testimony or documentary matter into any part of the official record of a proceeding subject to this part.

(d) *National Security Information* means information that has been classified pursuant to Executive Order 12356.

(e) *Party*, in the case of proceedings subject to this subpart includes a person admitted as a party under § 2.309 or an interested State admitted under § 2.315(c).

[41 FR 53329, Dec. 6, 1976, as amended at 47 FR 56314, Dec. 16, 1982; 69 FR 2264, Jan. 14, 2004]

§ 2.903 Protection of restricted data and national security information.

Nothing in this subpart shall relieve any person from safeguarding Restricted Data or National Security Information in accordance with the applicable provisions of laws of the United States and rules, regulations or orders of any Government Agency.

§ 2.904 Classification assistance.

On request of any party to a proceeding or of the presiding officer, the Commission will designate a representative to advise and assist the presiding officer and the parties with respect to security classification of information and the safeguards to be observed.

§ 2.905 Access to restricted data and national security information for parties; security clearances.

(a) Access to restricted data and national security information introduced into proceedings. Except as provided in paragraph (h) of this section, restricted data or national security information introduced into a proceeding subject to

this part will be made available to any interested party having the required security clearance; to counsel for an interested party provided the counsel has the required security clearance; and to such additional persons having the required security clearance as the Commission or the presiding officer determined are needed by such party for adequate preparation or presentation of his case. Where the interest of such party will not be prejudiced, the Commission or presiding officer may postpone action upon an application for access under this paragraph until after a notice of hearing, answers, and replies have been filed.

(b) Access to Restricted Data or National Security Information not introduced into proceedings.

(1) On application showing that access to Restricted Data or National Security Information may be required for the preparation of a party's case, and except as provided in paragraph (h) of this section, the Commission or the presiding officer will issue an order granting access to such Restricted Data or National Security Information to the party upon his obtaining the required security clearance, to counsel for the party upon their obtaining the required security clearance, and to such other individuals as may be needed by the party for the preparation and presentation of his case upon their obtaining the required clearance.

(2) Where the interest of the party applying for access will not be prejudiced, the Commission or the presiding officer may postpone action on an application pursuant to this paragraph until after a notice of hearing, answers and replies have been filed.

(c) The Commission will consider requests for appropriate security clearances in reasonable numbers pursuant to this section. A reasonable charge will be made by the Commission for costs of security clearance pursuant to this section.

(d) The presiding officer may certify to the Commission for its consideration and determination any questions relating to access to Restricted Data or National Security Information arising under this section. Any party affected by a determination or order of the presiding officer under this section may

§2.906

10 CFR Ch. I (1-1-07 Edition)

appeal forthwith to the Commission from the determination or order. The filing by the staff of an appeal from an order of a presiding officer granting access to Restricted Data or National Security Information shall stay the order pending determination of the appeal by the Commission.

(e) Application granting access to restricted data or national security information.

(1) An application under this section for orders granting access to restricted data or national security information not received from another Government agency will normally be acted upon by the presiding officer, or if a proceeding is not before a presiding officer, by the Commission.

(2) An application under this section for orders granting access to restricted data or national security information where the information has been received by the Commission from another Government agency will be acted upon by the Commission.

(f) To the extent practicable, an application for an order granting access under this section shall describe the subjects of Restricted Data or National Security Information to which access is desired and the level of classification (confidential, secret or other) of the information; the reasons why access to the information is requested; the names of individuals for whom clearances are requested; and the reasons why security clearances are being requested for those individuals.

(g) On the conclusion of a proceeding, the Commission will terminate all orders issued in the proceeding for access to Restricted Data or National Security Information and all security clearances granted pursuant to them; and may issue such orders requiring the disposal of classified matter received pursuant to them or requiring the observance of other procedures to safeguard such classified matter as it deems necessary to protect Restricted Data or National Security Information.

(h) Refusal to grant access to restricted data or national security information.

(1) The Commission will not grant access to restricted data or national security information unless it determines that the granting of access will

not be inimical to the common defense and security.

(2) Access to Restricted Data or National Security Information which has been received by the Commission from another Government agency will not be granted by the Commission if the originating agency determines in writing that access should not be granted. The Commission will consult the originating agency prior to granting access to such data or information received from another Government agency.

§2.906 Obligation of parties to avoid introduction of restricted data or national security information.

It is the obligation of all parties in a proceeding subject to this part to avoid, where practicable, the introduction of Restricted Data or National Security Information into the proceeding. This obligation rests on each party whether or not all other parties have the required security clearance.

§2.907 Notice of intent to introduce restricted data or national security information.

(a) If, at the time of publication of a notice of hearing, it appears to the staff that it will be impracticable for it to avoid the introduction of Restricted Data or National Security Information into the proceeding, it will file a notice of intent to introduce Restricted Data or National Security Information.

(b) If, at the time of filing of an answer to the notice of hearing it appears to the party filing that it will be impracticable for the party to avoid the introduction of Restricted Data or National Security Information into the proceeding, the party shall state in the answer a notice of intent to introduce Restricted Data or National Security Information into the proceeding.

(c) If, at any later stage of a proceeding, it appears to any party that it will be impracticable to avoid the introduction of Restricted Data or National Security Information into the proceeding, the party shall give to the other parties prompt written notice of intent to introduce Restricted Data or National Security Information into the proceeding.

Nuclear Regulatory Commission

§2.910

(d) Restricted Data or National Security Information shall not be introduced into a proceeding after publication of a notice of hearing unless a notice of intent has been filed in accordance with §2.908, except as permitted in the discretion of the presiding officer when it is clear that no party or the public interest will be prejudiced.

§2.908 Contents of notice of intent to introduce restricted data or other national security information.

(a) A party who intends to introduce Restricted Data or other National Security Information shall file a notice of intent with the Secretary. The notice shall be unclassified and, to the extent consistent with classification requirements, shall include the following:

(1) The subject matter of the Restricted Data or other National Security Information which it is anticipated will be involved;

(2) The highest level of classification of the information (confidential, secret, or other);

(3) The stage of the proceeding at which he anticipates a need to introduce the information; and

(4) The relevance and materiality of the information to the issues on the proceeding.

(b) In the discretion of the presiding officer, such notice, when required by §2.907(c), may be given orally on the record.

§2.909 Rearrangement or suspension of proceedings.

In any proceeding subject to this part where a party gives a notice of intent to introduce Restricted Data or other National Security Information, and the presiding officer determines that any other interested party does not have required security clearances, the presiding officer may in his discretion:

(a) Rearrange the normal order of the proceeding in a manner which gives such interested parties an opportunity to obtain required security clearances with minimum delay in the conduct of the proceeding.

(b) Suspend the proceeding or any portion of it until all interested parties have had opportunity to obtain required security clearances. No proceeding shall be suspended for such rea-

sons for more than 100 days except with the consent of all parties or on a determination by the presiding officer that further suspension of the proceeding would not be contrary to the public interest.

(c) Take such other action as he determines to be in the best interest of all parties and the public.

§2.910 Unclassified statements required.

(a) Whenever Restricted Data or other National Security Information is introduced into a proceeding, the party offering it shall submit to the presiding officer and to all parties to the proceeding an unclassified statement setting forth the information in the classified matter as accurately and completely as possible.

(b) In accordance with such procedures as may be agreed upon by the parties or prescribed by the presiding officer, and after notice to all parties and opportunity to be heard thereon, the presiding officer shall determine whether the unclassified statement or any portion of it, together with any appropriate modifications suggested by any party, may be substituted for the classified matter or any portion of it without prejudice to the interest of any party or to the public interest.

(c) If the presiding officer determines that the unclassified statement, together with such unclassified modifications as he finds are necessary or appropriate to protect the interest of other parties and the public interest, adequately sets forth information in the classified matter which is relevant and material to the issues in the proceeding, he shall direct that the classified matter be excluded from the record of the proceeding. His determination will be considered by the Commission as a part of the decision in the event of review.

(d) If the presiding officer determines that an unclassified statement does not adequately present the information contained in the classified matter which is relevant and material to the issues in the proceeding, he shall include his reasons in his determination. This determination shall be included as

§2.911

part of the record and will be considered by the Commission in the event of review of the determination.

(e) The presiding officer may postpone all or part of the procedures established in this section until the reception of all other evidence has been completed. Service of the unclassified statement required in paragraph (a) of this section shall not be postponed if any party does not have access to Restricted Data or other National Security Information.

§2.911 Admissibility of restricted data or other national security information.

A presiding officer shall not receive any Restricted Data or other National Security Information in evidence unless:

(a) The relevance and materiality of the Restricted Data or other National Security Information to the issues in the proceeding, and its competence, are clearly established; and

(b) The exclusion of the Restricted Data or other National Security Information would prejudice the interests of a party or the public interest.

§2.912 Weight to be attached to classified evidence.

In considering the weight and effect of any Restricted Data or other National Security Information received in evidence to which an interested party has not had opportunity to receive access, the presiding officer and the Commission shall give to such evidence such weight as is appropriate under the circumstances, taking into consideration any lack of opportunity to rebut or impeach the evidence.

§2.913 Review of Restricted Data or other National Security Information received in evidence.

At the close of the reception of evidence, the presiding officer shall review the record and shall direct that any Restricted Data or other National Security Information be expunged from the record where such expunction would not prejudice the interests of a party or the public interest. Such directions by the presiding officer will be considered by the Commission in the

10 CFR Ch. I (1–1–07 Edition)

event of review of the determinations of the presiding officer.

Subpart J—Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

SOURCE: 54 FR 14944, Apr. 14, 1989, unless otherwise noted.

§2.1000 Scope of subpart J.

The rules in this subpart, together with the rules in subparts C and G of this part, govern the procedure for an application for authorization to construct a high-level radioactive waste repository at a geologic repository operations area noticed under §§2.101(f)(8) or 2.105(a)(5), and for an application for a license to receive and possess high level radioactive waste at a geologic repository operations area. The procedures in this subpart take precedence over those in 10 CFR part 2, subpart C, except for the following provisions: §§2.301; 2.303; 2.307; 2.309; 2.312; 2.313; 2.314; 2.315; 2.316; 2.317(a); 2.318; 2.319; 2.320; 2.321; 2.322; 2.323; 2.324; 2.325; 2.326; 2.327; 2.328; 2.330; 2.331; 2.333; 2.335; 2.338; 2.339; 2.342; 2.343; 2.344; 2.345; 2.346; 2.348; and 2.390. The procedures in this subpart take precedence over those in 10 CFR part 2, subpart G, except for the following provisions: §§2.701, 2.702; 2.703; 2.708; 2.709; 2.710; 2.711; 2.712.

[69 FR 2264, Jan. 14, 2004]

§2.1001 Definitions.

Bibliographic header means the minimum series of descriptive fields that a potential party, interested governmental participant, or party must submit with a document or other material.

Circulated draft means a nonfinal document circulated for supervisory concurrence or signature in which the original author or others in the concurrence process have non-concurred. A “circulated draft” meeting the above criterion includes a draft of a document that eventually becomes a final document, and a draft of a document that does not become a final document due to either a decision not to finalize

the document or the passage of a substantial period of time in which no action has been taken on the document.

Complex document means a document that consists (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature, and graphic or other Binary Large Objects that exceed 50 megabytes and cannot logically be divided. For example, specialized submissions may include runtime executable software, viewer or printer executables, dynamic link library (.dll) files, large data sets associated with an executable, and actual software code for analytical programs that a party may intend to introduce into the proceeding.

Document means any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic.

Documentary material means:

(1) Any information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter;

(2) Any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information or that party's position; and

(3) All reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related "circulated drafts," relevant to both the license application and the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

DOE means the U.S. Department of Energy or its duly authorized representatives.

Electronic docket means the NRC information system that receives, dis-

tributes, stores, and retrieves the Commission's adjudicatory docket materials.

Image means a visual likeness of a document, presented on a paper copy, microform, or a bit-map on optical or magnetic media.

Interested governmental participant means any person admitted under § 2.315(c) of this part to the proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter.

Large document means a document that consists of electronic files that are larger than 50 megabytes.

Licensing Support Network means the combined system that makes documentary material available electronically to parties, potential parties, and interested governmental participants to a proceeding for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter.

LSN Administrator means the person within the U.S. Nuclear Regulatory Commission responsible for coordinating access to and the integrity of data available on the Licensing Support Network. The LSN Administrator shall not be in any organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste repository licensing proceeding or is a part of the management chain reporting to the Director, Office of Nuclear Material Safety and Safeguards. For the purposes of this subpart, the organizational unit within the NRC selected to be the LSN Administrator shall not be considered to be a party to the proceeding.

Marginalia means handwritten, printed, or other types of notations added to a document excluding underlining and highlighting.

§ 2.1002

10 CFR Ch. I (1–1–07 Edition)

NRC means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

Party for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in Section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 2.309 to the proceeding on an application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, and an application for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 and 63 of this chapter; provided that a host State, affected unit of local government, or affected Indian Tribe files a list of contentions in accordance with the provisions of § 2.309.

Personal record means a document in the possession of an individual associated with a party, interested governmental participant, or potential party that was not required to be created or retained by the party, interested governmental participant, or potential party, and can be retained or discarded at the possessor's sole discretion, or documents of a personal nature that are not associated with any business of the party, interested governmental participant, or potential party.

Potential party means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d), is given access to the Licensing Support Network and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to § 2.1010.

Pre-license application electronic docket means the NRC's electronic information system that receives, distributes, stores, and maintains NRC pre-license application docket materials during the pre-license application phase.

Pre-license application phase means the time period before a construction authorization for a high-level radio-

active waste repository at a geologic repository operations area under parts 60 or 63 of this chapter is docketed under § 2.101(f)(3), and the time period before a license application to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 is docketed under § 2.101(f)(3).

Pre-License Application Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the pre-license application phase with jurisdiction specified at the time of designation.

Preliminary draft means any nonfinal document that is not a circulated draft.

Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, designated in the notice of hearing to preside.

Searchable full text means the electronic indexed entry of a document that allows the identification of specific words or groups of words within a text file.

Simple document means a document that consists of electronic files that are 50 megabytes or less.

Topical Guidelines means the set of topics set forth in Regulatory Guide 3.69, Topical Guidelines for the Licensing Support System, which are intended to serve as guidance on the scope of "documentary material".

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7795, Feb. 26, 1991; 63 FR 71736, Dec. 30, 1998; 66 FR 29465, May 31, 2001; 66 FR 55788, Nov. 2, 2001; 69 FR 2264, Jan. 14, 2004; 69 FR 32848, June 14, 2004]

§ 2.1002 [Reserved]

§ 2.1003 Availability of material.

(a) Subject to the exclusions in § 2.1005 and paragraphs (b), (c), and (e) of this section, DOE shall make available, no later than six months in advance of submitting its license application for a geologic repository, the NRC shall make available no later than thirty days after the DOE certification of compliance under § 2.1009(b), and

Nuclear Regulatory Commission

§ 2.1004

each other potential party, interested governmental participant or party shall make available no later than ninety days after the DOE certification of compliance under § 2.1009(b)—

(1) An electronic file including bibliographic header for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant or party; provided, however, that an electronic file need not be provided for acquired documentary material that has already been made available by the potential party, interested governmental participant or party that originally created the documentary material. Concurrent with the production of the electronic files will be an authentication statement for posting on the LSN Web site that indicates where an authenticated image copy of the documents can be obtained.

(2) In electronic image format, subject to the claims of privilege in § 2.1006, graphic-oriented documentary material that includes raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs, which have been printed, scripted, or hand written. Text embedded within these documents need not be separately entered in searchable full text. A bibliographic header must be provided for all graphic-oriented documentary material. Graphic-oriented documents may include—

- (i) Calibration procedures, logs, guidelines, data and discrepancies;
- (ii) Gauge, meter and computer settings;
- (iii) Probe locations;
- (iv) Logging intervals and rates;
- (v) Data logs in whatever form captured;
- (vi) Text data sheets;
- (vii) Equations and sampling rates;
- (viii) Sensor data and procedures;
- (ix) Data Descriptions;
- (x) Field and laboratory notebooks;
- (xi) Analog computer, meter or other device print-outs;
- (xii) Digital computer print-outs;
- (xiii) Photographs;
- (xiv) Graphs, plots, strip charts, sketches;

(xv) Descriptive material related to the information identified in this paragraph.

(3) In an electronic file, subject to the claims of privilege in § 2.1006, only a bibliographic header for each item of documentary material that is not suitable for image or searchable full text.

(4) An electronic bibliographic header for each documentary material—

(i) For which a claim of privilege is asserted;

(ii) Which constitutes confidential financial or commercial information; or

(iii) Which constitutes safeguards information under § 73.21 of this chapter.

(b) Basic licensing documents generated by DOE, such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by NRC, such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be made available in electronic form by the respective agency that generated the document.

(c) The participation of the host State in the pre-license application phase shall not affect the State's ability to exercise its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

(d) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

(e) Each potential party, interested governmental participant or party shall continue to supplement its documentary material made available to other participants via the LSN with any additional material created after the time of its initial certification in accordance with paragraph (a)(1) through (a)(4) of this section until the discovery period in the proceeding has concluded.

[63 FR 71737, Dec. 30, 1998, as amended at 66 FR 29465, May 31, 2001; 69 FR 2264, Jan. 14, 2004; 69 FR 32848, June 14, 2004]

§ 2.1004 Amendments and additions.

Any document that has not been provided to other parties in electronic form must be identified in an electronic notice and made available for inspection and copying by the potential party, interested governmental

§ 2.1005

participant, or party responsible for the submission of the document within five days after it has been requested unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding. The time allowed under this paragraph will be stayed pending Officer action on a motion to extend the time.

[63 FR 71737, Dec. 30, 1998]

§ 2.1005 Exclusions.

The following material is excluded from the requirement to provide electronic access, either pursuant to § 2.1003, or through derivative discovery pursuant to § 2.1019(i)—

- (a) Official notice materials;
- (b) Reference books and text books;
- (c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;
- (d) Press clippings and press releases;
- (e) Junk mail;
- (f) References cited in contractor reports that are readily available;
- (g) Classified material subject to subpart I of this part;
- (h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.
- (i) Correspondence between a potential party, interested governmental participant, or party and the Congress of the United States.

[63 FR 71738, Dec. 30, 1998, as amended at 69 FR 32848, June 14, 2004]

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(a)(4), the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.390 may be asserted by potential parties, interested States, local governmental bodies, Federally-recognized Indian Tribes, and parties. In addition to Federal agencies, the deliberative process privilege

10 CFR Ch. I (1–1–07 Edition)

may also be asserted by States, local governmental bodies, and Federally-recognized Indian Tribes.

(b) Any document for which a claim of privilege is asserted, but is denied in whole or in part by the Pre-License Application Presiding Officer or the Presiding Officer, must be provided in electronic form by the party, interested governmental participant, or potential party that asserted the claim to—

- (1) The other participants; or
- (2) To the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §§ 2.1010(b) or 2.1018(c).

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be provided for electronic access pursuant to § 2.1003(a).

[63 FR 71738, Dec. 30, 1998; 64 FR 15920, Apr. 2, 1999, as amended at 69 FR 2265, Jan. 14, 2004]

§ 2.1007 Access.

(a)(1) A system to provide electronic access to the Licensing Support Network shall be provided at the headquarters of DOE, and at all DOE Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, beginning in the pre-license application phase.

(2) A system to provide electronic access to the Licensing Support Network shall be provided at the NRC Web site, <http://www.nrc.gov>, and/or at the NRC Public Document Room beginning in the pre-license application phase.

(3) [Reserved]

(b) Public availability of paper and electronic copies of the records of NRC and DOE, as well as duplication fees, and fee waiver for those records, is governed by the regulations of the respective agencies.

[63 FR 71738, Dec. 30, 1998, as amended at 64 FR 48949, Sept. 9, 1999]

Nuclear Regulatory Commission

§ 2.1010

§ 2.1008 [Reserved]

§ 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its responsibility to provide electronic files of documentary material ;

(2) Establish procedures to implement the requirements in § 2.1003;

(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material;

(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the NRC under § 2.1011(d).

(b) The responsible official designated under paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. The initial certification must be made at the time the participant is required to comply with § 2.1003. The responsible official for the DOE shall also update this certification at the time DOE submits the license application.

[63 FR 71738, Dec. 30, 1998, as amended at 66 FR 29466, May 31, 2001]

§ 2.1010 Pre-License Application Presiding Officer.

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter to serve as the Pre-License Application Presiding Officer to rule on disputes over the electronic availability of documents during the pre-license application phase, including disputes relating to privilege, and disputes relating to the implementation of the recommendations of the Advisory Review Panel established under § 2.1011(d).

(2) The Pre-License Application Presiding Officer shall be designated at

such time during the pre-license application phase as the Commission finds it appropriate, but in any event no later than fifteen days after the DOE certification of initial compliance under § 2.1009(b).

(b) The Pre-License Application Presiding Officer shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded under § 2.1005;

(3) Whether the material is privileged or otherwise excepted from disclosure under § 2.1006;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the

Atomic Energy Act of 1954, as amended, the entity in violation may be subject to a civil penalty imposed pursuant to §2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed to be an order issued under section 161b of the Atomic Energy Act of 1954, as amended.

(c) Upon a final determination that the material is relevant, and not privileged, exempt from disclosure, or otherwise exempt from production under §2.1005, the potential party, interested governmental participant, or party who asserted the claim of withholding must make the document available in accordance with the provisions of this subpart within five days.

(d) The service of all pleadings and answers, orders, and decisions during the pre-license application phase shall be made according to the procedures specified in §2.1013(c) and entered into the pre-license application electronic docket.

(e) The Pre-License Application presiding officer possesses all the general powers specified in §§2.319 and 2.321(c).

(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

[63 FR 71738, Dec. 30, 1998, as amended at 66 FR 29466, May 31, 2001; 69 FR 2265, Jan. 14, 2004]

§2.1011 Management of electronic information.

(a) Electronic document production and the electronic docket are subject to the provisions of this subpart.

(b)(1) The NRC, DOE, parties, and potential parties participating in accordance with the provision of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(2) The NRC, DOE, parties, and potential parties participating in accordance with the provision of this subpart shall comply with the following standards in the design of the computer systems necessary to comply with the re-

quirements for electronic document production and service:

(i) The participants shall make textual (or, where non-text, image) versions of their documents available on a web accessible server which is able to be canvassed by web indexing software (i.e., a “robot”, “spider”, “crawler”) and the participant system must make both data files and log files accessible to this software.

(ii) The participants shall make bibliographic header data available in an HTTP (Hypertext Transfer Protocol) accessible, ODBC (Open Database Connectivity) and SQL (Structured Query Language)-compliant (ANSI IX3.135–1992/ISO 9075–1992) database management system (DBMS). Alternatively, the structured data containing the bibliographic header may be made available in a standard database readable (e.g., XML (Extensible Markup Language <http://www.w3.org/xml/>), comma delimited, or comma separated value (.csv)) file.

(iii) Textual material must be formatted to comply with the ISO/IEC 8859–1 character set and be in one of the following acceptable formats: ASCII, native word processing (Word, WordPerfect), PDF Normal, or HTML.

(iv) Image files must be formatted as TIFF CCITT G4 for bi-tonal images or PNG (Portable Network Graphics) per [<http://www.w3.org/TR/REC-png-multi.html>] format for grey-scale or color images, or PDF (Portable Document Format—Image). TIFF, PDF, or PNG images will be stored at 300 dpi (dots per inch) or greater, grey scale images at 150 dpi or greater with eight bits of tonal depth, and color images at 150 dpi or greater with 24 bits of color depth. Images found on participant machines will be stored as single image-per-page to facilitate retrieval of no more than a single page, or alternatively, images may be stored in an image-per-document format if software is incorporated in the web server that allows image-per-page representation and delivery.

(v) The participants shall programmatically link, preferably via hyperlink or some other automated process, the bibliographic header record with the text or image file it represents. Each participant’s system

Nuclear Regulatory Commission

§2.1011

must afford the LSN software enough information to allow a text or image file to be identified to the bibliographic data that describes it.

(vi) To facilitate data exchange, participants shall adhere to hardware and software standards, including, but not limited to:

(A) Network access must be HTTP/1.1 [<http://www.faqs.org/rfcs/rfc2068.html>] over TCP (Transmission Control Protocol, [<http://www.faqs.org/rfcs/rfc793.html>]) over IP (Internet Protocol, [<http://www.faqs.org/rfcs/rfc791.html>]).

(B) Associating server names with IP addresses must follow the DNS (Domain Name System), [<http://www.faqs.org/rfcs/rfc1034.html>] and [<http://www.faqs.org/rfcs/rfc1035.html>].

(C) Web page construction must be HTML [<http://www.w3.org/TR/REC-html40/>].

(D) Electronic mail (e-mail) exchange between e-mail servers must be SMTP (Simple Mail Transport Protocol, [<http://www.faqs.org/rfcs/rfc821.html>]).

(E) Format of an electronic mail message must be per [<http://www.faqs.org/rfcs/rfc822.html>] optionally extended by MIME (Multipurpose Internet Mail Extensions) per [<http://www.faqs.org/rfcs/rfc2045.html>] to accommodate multipurpose e-mail.

(c) The Licensing Support Network shall be coordinated by the LSN Administrator, who shall be designated before the start of the pre-license application phase. The LSN Administrator shall have the responsibility to—

(1) Identify technical and policy issues related to implementation of the LSN for LSN Advisory Review Panel and Commission consideration;

(2) Address the consensus advice of the LSN Advisory Review Panel under paragraph (e)(1) of this section that is consistent with the requirements of this subpart;

(3) Identify any problems experienced by participants regarding LSN availability, including the availability of individual participant's data, and provide a recommendation to resolve any such problems to the participant(s) and the Pre-License Application Presiding Officer relative to the resolution of any disputes regarding LSN availability,

including disputes on the availability of an individual participant's data;

(4) Identify any problems regarding the integrity of documentary material certified in accordance with §2.1009(b) by the participants to be in the LSN, and provide a recommendation to resolve any such problems to the participant(s) and the Pre-License Application Presiding Officer relative to the resolution of any disputes regarding the integrity of documentary material;

(5) Provide periodic reports to the Commission on the status of LSN functionality and operability.

(6) Evaluate LSN participant compliance with the basic design standards in paragraph (b)(2) of this section, and provide for individual variances from the design standards to accommodate changes in technology or problems identified during initial operability testing of the individual documentary collection websites or the "central LSN site".

(7) Issue guidance for LSN participants on how best to comply with the design standards in paragraph (b)(2) of this section.

(d) The Secretary of the Commission shall reconstitute the LSS Advisory Review Panel as the LSN Advisory Review Panel, composed of the interests currently represented on the LSS Advisory Review Panel. The Secretary of the Commission shall have the authority to appoint additional representatives to the LSN Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. I, giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the NRC HLW Licensing Support System Advisory Review Panel.

(e)(1) The LSN Advisory Review Panel shall provide advice to—

(i) NRC on the fundamental issues of the type of computer system necessary to access the Licensing Support Network effectively under paragraph (b) of this section; and

(ii) The Secretary of the Commission on the operation and maintenance of the electronic docket established for the HLW geologic repository licensing proceeding under the Commission's Rules of Practice (10 CFR part 2).

§2.1012

(iii) The LSN Administrator on solutions to improve the functioning of the LSN;

(2) The responsibilities of the LSN Advisory Review Panel shall include advice on—

(i) Format standards for providing electronic access to the documentary material certified by each participant to be made available in the LSN to the other parties, interested governmental participants, or potential parties;

(ii) The procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) Other duties as specified in this subpart or as directed by the Secretary of the Commission.

[63 FR 71739, Dec. 30, 1998, as amended at 66 FR 29466, May 31, 2001]

§2.1012 Compliance.

(a) If the Department of Energy fails to make its initial certification at least six months prior to tendering the application, upon receipt of the tendered application, notwithstanding the provisions of §2.101(f)(3), the Director of the NRC's Office of Nuclear Material Safety and Safeguards will not docket the application until at least six months have elapsed from the time of the certification. The Director may determine that the tendered application is not acceptable for docketing under this subpart if the application is not accompanied by an updated certification pursuant to §2.1009(b), or if the Secretary of the Commission determines that the application is not submitted on optical storage media in a format consistent with NRC regulations and guidance, or for non-compliance with any other requirements identified in this subpart.

(b)(1) A person, including a potential party given access to the Licensing Support Network under this subpart, may not be granted party status under §2.309, or status as an interested governmental participant under §2.315, if it cannot demonstrate substantial and timely compliance with the requirements of §2.1003 at the time it requests participation in the HLW licensing proceeding under §2.309 or §2.315.

10 CFR Ch. I (1-1-07 Edition)

(2) A person denied party status or interested governmental participant status under paragraph (b)(1) of this section may request party status or interested governmental participant status upon a showing of subsequent compliance with the requirements of §2.1003. Admission of such a party or interested governmental participant under §§2.309 or 2.315, respectively, is conditioned on accepting the status of the proceeding at the time of admission.

(c) The Presiding Officer shall not make a finding of substantial and timely compliance pursuant to paragraph (b) of this section for any person who is not in compliance with all applicable orders of the Pre-License Application Presiding Officer designated pursuant to §2.1010.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7796, Feb. 26, 1991; 63 FR 71739, Dec. 30, 1998; 66 FR 29466, May 31, 2001; 69 FR 2265, Jan. 14, 2004; 69 FR 32848, June 14, 2004]

§2.1013 Use of the electronic docket during the proceeding.

(a)(1) As specified in §2.303, the Secretary of the Commission will maintain the official docket of the proceeding on the application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, and for applications for a license to receive and possess high level radioactive waste at a geologic repository operations area under parts 60 or 63 of this Chapter.

(2) The Secretary of the Commission will establish an electronic docket to contain the official record materials of the high-level radioactive waste repository licensing proceeding in searchable full text, or, for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been made available to the parties in electronic form before the commencement of that portion of the hearing in which the exhibit will be offered. The electronic docket will contain a list of

Nuclear Regulatory Commission

§2.1013

all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. For any hearing sessions recorded stenographically or by other means, transcripts will be entered into the electronic docket on a daily basis in order to afford next-day availability at the hearing. However, for any hearing sessions recorded on videotape or other video medium, if a copy of the video recording is made available to all parties on a daily basis that affords next-day availability at the hearing, a transcript of the session prepared from the video recording will be entered into the electronic docket within twenty-four (24) hours of the time the transcript is tendered to the electronic docket by the transcription service.

(c)(1) All filings in the adjudicatory proceeding on the application for a high-level radioactive waste geologic repository under part 60 or 63 of this chapter shall be transmitted by the submitter to the Presiding Officer, parties, and Secretary of the Commission, according to the following requirements—

(i) “Simple documents” must be transmitted electronically via EIE;

(ii) “Large documents” must be transmitted electronically in multiple transmissions of 50 megabytes or less each via EIE;

(iii) “Complex documents”:

(A) Those portions that can be electronically submitted through the EIE, in 50 MB or less segments, must be transmitted electronically, along with a transmittal letter; and

(B) Those portions that are not capable of being transmitted electronically must be submitted on optical storage media which must also include those portions of the document that had been or will be transmitted electronically.

(iv) Electronic submissions must have the following resolution—

(A) Electronic submissions of files created after January 1, 2004 must have 300 dots per inch (dpi) as the minimum resolution for bi-tonal, color, and grayscale, except in limited circumstances where submitters may need to use an image scanned before January 1, 2004, in a document created after January 1, 2004, or the scanning

process for a large, one-page image may not successfully complete at the 300 dpi standard resolution.

(B) Electronic submissions of files created before January 1, 2004, or electronic submissions created after January 1, 2004, which cannot meet the 300 dpi standard for color and grayscale, must meet the standard for documents placed on LSN participant Web sites in §2.1011(b)(2)(iv) of this subpart, which is 150 dpi for color and grayscale documents and 300 dpi for bi-tonal documents.

(v) Electronic submissions must be generated in the appropriate PDF output format by using:

(A) PDF—Formatted Text and Graphics for textual documents converted from native applications;

(B) PDF—Searchable Image (Exact) for textual documents converted from scanned documents; and

(C) PDF—Image Only for graphic-, image-, and forms-oriented documents. In addition, Tagged Image File Format (TIFF) images and the results of spreadsheet applications must to be converted to PDF, except in those rare instances where PDF conversion is not practicable.

(vi) Electronic submissions must not rely on hyperlinks to other documents or Web sites for completeness or access except for hyperlinks that link to material within the same PDF file. If the submittal contains hyperlinks to other documents or Web sites, then it must include a disclaimer to the effect that the hyperlinks may be inoperable or are not essential to the use of the filing. Information contained in hyperlinks to a Web site on the Internet or to another PDF file, that is necessary for the completeness of a filing, must be submitted in its entirety in the filing or as an attachment to the filing.

(vii) All electronic submissions must be free of author-imposed security restrictions.

(2) Filings required to be served shall be served upon either the parties and interested governmental participants, or their designated representatives. When a party or interested governmental participant has appeared by attorney, service must be made upon the attorney of record.

§2.1015

10 CFR Ch. I (1–1–07 Edition)

(3) Service upon a party or interested governmental participant is completed when the sender receives electronic acknowledgment (“delivery receipt”) that the electronic submission has been placed in the recipient’s electronic mailbox.

(4) Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by—

- (i) Electronic acknowledgment (“delivery receipt”);
- (ii) The affidavit of the person making the service; or
- (iii) The certificate of counsel.

(5) All Presiding Officer and Commission issuances and orders will be transmitted electronically to the parties and interested governmental participants.

(d) Online access to the electronic docket, including a Protective Order File if authorized by a Presiding Officer, shall be provided to the Presiding Officer, the representatives of the parties and interested governmental participants, and the witnesses while testifying, for use during the hearing. Use of paper copy and other images will also be permitted at the hearing.

[63 FR 71739, Dec. 30, 1998, as amended at 66 FR 55788, Nov. 2, 2001; 69 FR 2265, Jan. 14, 2004; 69 FR 32849, June 14, 2004]

§2.1015 Appeals.

(a) No appeals from any Pre-License Application Presiding Officer or Presiding Officer order or decision issued under this subpart are permitted, except as prescribed in paragraphs (b), (c), and (d) of this section.

(b) A notice of appeal from a Pre-License Application presiding officer order issued under §2.1010, a presiding officer prehearing conference order issued under §2.1021, a presiding officer order granting or denying a motion for summary disposition issued in accordance with §2.1025, or a presiding officer order granting or denying a petition to amend one or more contentions under §2.309, must be filed with the Commission no later than ten (10) days after service of the order. A supporting brief must accompany the notice of appeal. Any other party, interested governmental participant, or potential party

may file a brief in opposition to the appeal no later than ten (10) days after service of the appeal.

(c) Appeals from a Presiding Officer initial decision or partial initial decision must be filed and briefed before the Commission in accordance with the following requirements.

(1) *Notice of appeal.* Within ten (10) days after service of an initial decision, any party may take an appeal to the Commission by filing a notice of appeal. The notice shall specify:

- (i) The party taking the appeal; and
- (ii) The decision being appealed.

(2) *Filing appellant’s brief.* Each appellant shall file a brief supporting its position on appeal within thirty (30) days (40 days if Commission staff is the appellant) after the filing of notice required by paragraph (a) of this section.

(3) *Filing responsive brief.* Any party who is not an appellant may file a brief in support of or in opposition to the appeal within thirty (30) days after the period has expired for the filing and service of the brief of all appellants. Commission staff may file a responsive brief within forty (40) days after the period has expired for the filing and service of the briefs of all appellants. A responding party shall file a single responsive brief regardless of the number of appellants’ briefs filed.

(4) *Brief content.* A brief in excess of ten (10) pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited.

(i) An appellant’s brief must clearly identify the errors of fact or law that are the subject of the appeal. An intervenor-appellant’s brief must be confined to issues which the intervenor-appellant placed in controversy or sought to place in controversy in the proceeding. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must also be provided.

(ii) Each responsive brief must contain a reference to the precise portion of the record which supports each factual assertion made.

(5) *Brief length.* A party shall not file a brief in excess of seventy (70) pages in

Nuclear Regulatory Commission

§ 2.1018

length, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc. A party may request an increase of this page limit for good cause. Such a request shall be made by motion submitted at least seven (7) days before the date upon which the brief is due for filing and shall specify the enlargement requested.

(6) *Certificate of service.* All documents filed under this section must be accompanied by a certificate reflecting service upon all other parties to the proceeding.

(7) *Failure to comply.* A brief which in form or content is not in substantial compliance with the provisions of this section may be stricken, either on motion of a party or by the Commission on its own initiative.

(d) When, in the judgment of a Pre-License Application presiding officer or presiding officer, prompt appellate review of an order not immediately appealable under paragraph (b) of this section is necessary to prevent detriment to the public interest or unusual delay or expense, the Pre-License Application presiding officer or presiding officer may refer the ruling promptly to the Commission, and shall provide notice of this referral to the parties, interested governmental participants, or potential parties. The parties, interested governmental participants, or potential parties may also request that the Pre-License Application presiding officer or presiding officer certify under § 2.319 rulings not immediately appealable under paragraph (b) of this section.

(e) Unless otherwise ordered, the filing of an appeal, petition for review, referral, or request for certification of a ruling shall not stay the proceeding or extend the time for the performance of any act.

[56 FR 7797, Feb. 26, 1991, as amended at 56 FR 29410, June 27, 1991; 69 FR 2265, Jan. 14, 2004]

§ 2.1017 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is in-

cluded unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the electronic docket is unavailable for more than four access hours of any day that would be counted in the computation of time, that day will not be counted in the computation of time.

[63 FR 71740, Dec. 30, 1998]

§ 2.1018 Discovery.

(a)(1) Parties, potential parties, and interested governmental participants in the high-level waste licensing proceeding may obtain discovery by one or more of the following methods:

(i) Access to the documentary material made available pursuant to § 2.1003;

(ii) Entry upon land for inspection, access to raw data, or other purposes pursuant to § 2.1020;

(iii) Access to, or the production of, copies of documentary material for which bibliographic headers only have been submitted pursuant to § 2.1003(a);

(iv) Depositions upon oral examination pursuant to § 2.1019;

(v) Requests for admissions pursuant to § 2.708;

(vi) Informal requests for information not made electronically available, such as the names of witnesses and the subjects they plan to address; and

(vii) Interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

(2) Interrogatories and depositions upon written questions may be authorized by order of the discovery master appointed under paragraph (g) of this section, or if no discovery master has been appointed, by order of the Presiding Officer, in the event that the parties are unable, after informal good faith efforts, to resolve a dispute in a timely fashion concerning the production of information.

(b)(1) Parties, potential parties, and interested governmental participants,

§2.1018

10 CFR Ch. I (1–1–07 Edition)

pursuant to the methods set forth in paragraph (a) of this section, may obtain discovery regarding any matter, not privileged, which is relevant to the licensing of the likely candidate site for a geologic repository, whether it relates to the claim or defense of the person seeking discovery or to the claim or defense of any other person. Except for discovery pursuant to §§2.1018(a)(2) and 2.1019 of this subpart, all other discovery shall begin during the pre-license application phase. Discovery pursuant to §§2.1018(a)(2) and 2.1019 of this subpart shall begin after the issuance of the first pre-hearing conference order under §2.1021 of this subpart, and shall be limited to the issues defined in that order or subsequent amendments to the order. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) A party, potential party, or interested governmental participant may obtain discovery of documentary material otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of, or for the hearing by, or for another party's, potential party's, or interested governmental participant's representative (including its attorney, surety, indemnitor, insurer, or similar agent) only upon a showing that the party, potential party, or interested governmental participant seeking discovery has substantial need of the materials in the preparation of its case and that it is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of these materials when the required showing has been made, the Presiding Officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party, potential party, or interested governmental participant concerning the proceeding.

(c)(1) Upon motion by a party, potential party, interested governmental participant, or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order that justice requires to pro-

tect a party, potential party, interested governmental participant, or other person from annoyance, embarrassment, oppression, or undue burden, delay, or expense, including one or more of the following:

- (i) That the discovery not be had;
- (ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (iii) That the discovery may be had only by a method of discovery other than that selected by the party, potential party, or interested governmental participant seeking discovery;
- (iv) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;
- (v) That discovery be conducted with no one present except persons designated by the presiding officer;
- (vi) That, subject to the provisions of §2.390 of this part, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or
- (vii) That studies and evaluations not be prepared.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party, potential party, interested governmental participant or other person provide or permit discovery.

(d) Except as provided in paragraph (b) of this section, and unless the Presiding Officer upon motion, for the convenience of parties, potential parties, interested governmental participants, and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party, potential party, or interested governmental participant is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's, potential party's, or interested governmental participant's discovery.

(e) A party, potential party, or interested governmental participant who has made available in electronic form all material relevant to any discovery request or who has responded to a request for discovery with a response that was complete when made is under

Nuclear Regulatory Commission

§2.1019

no duty to supplement its response to include information thereafter acquired, except as follows:

(1) To the extent that written interrogatories are authorized pursuant to paragraph (a)(2) of this section, a party or interested governmental participant is under a duty to seasonably supplement its response to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the witness is expected to testify, and the substance of the witness' testimony.

(2) A party, potential party, or interested governmental participant is under a duty seasonably to amend a prior response if it obtains information upon the basis of which (i) it knows that the response was incorrect when made, or (ii) it knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Presiding Officer or agreement of the parties, potential parties, and interested governmental participants.

(f)(1) If a deponent of a party, potential party, or interested governmental participant upon whom a request for discovery is served fails to respond or objects to the request, or any part thereof, the party, potential party, or interested governmental participant submitting the request or taking the deposition may move the Presiding Officer, within five days after the date of the response or after failure to respond to the request, for an order compelling a response in accordance with the request. The motion shall set forth the nature of the questions or the request, the response or objection of the party, potential party, interested governmental participant, or other person upon whom the request was served, and arguments in support of the motion. For purposes of this paragraph, an evasive or incomplete answer or response shall be treated as a failure to answer or respond. Failure to answer or respond shall not be excused on the ground that the discovery sought is ob-

jectionable unless the person, party, potential party, or interested governmental participant failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section.

(2) In ruling on a motion made pursuant to this section, the Presiding Officer may make such a protective order as it is authorized to make on a motion made pursuant to paragraph (c) of this section.

(3) An independent request for issuance of a subpoena may be directed to a nonparty for production of documents. This section does not apply to requests for the testimony of the NRC regulatory staff under §2.709.

(g) The presiding officer, under §2.322, may appoint a discovery master to resolve disputes between parties concerning informal requests for information as provided in paragraphs (a)(1) and (a)(2) of this section.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7797, Feb. 26, 1991; 63 FR 71740, Dec. 30, 1998; 69 FR 2266, Jan. 14, 2004]

§2.1019 Depositions.

(a) Any party or interested governmental participant desiring to take the testimony of any person by deposition on oral examination shall, without leave of the Commission or the Presiding Officer, give reasonable notice in writing to every other party and interested governmental participant, to the person to be examined, and to the Presiding Officer of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or her or the class or group to which he or she belongs, the matters upon which each person will be examined and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(b) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of

§2.1019

10 CFR Ch. I (1-1-07 Edition)

the United States, or a person authorized to administer oaths designated by the Commission. Depositions may be conducted by telephone or by video teleconference at the option of the party or interested governmental participant taking the deposition.

(c) The deponent shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination shall proceed as at a hearing. Each question propounded shall be recorded and the answer taken down in the words of the witness. Objections on questions of evidence shall be noted in short form without the arguments. The officer shall not decide on the competency, materiality, or relevancy of evidence but shall record the evidence subject to objection. Objections on questions of evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless the deponent is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly transmit an electronic copy of the deposition to the Secretary of the Commission for entry into the electronic docket.

(e) Where the deposition is to be taken on written questions as authorized under §2.1018(a)(2), the party or interested governmental participant taking the deposition shall electronically serve a copy of the questions, showing each question separately and consecutively numbered, on every other party and interested governmental participant with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be asked. Within ten days after service, any other party or interested governmental participant may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and

transmitted in electronic form to the Secretary of the Commission for entry into the electronic docket as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the evidentiary record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party or interested governmental participant, any other party or interested governmental participant may introduce any other parts. A party or interested governmental participant shall not be deemed to make a person its own witness for any purpose by taking his or her deposition.

(g) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party or interested governmental participant at whose instance the deposition is taken.

(h) The deponent may be accompanied, represented, and advised by legal counsel.

(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an electronic index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been made available electronically. All documents that are not identical to documents already made available electronically, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from the initial requirements of §2.1003 to be made available electronically, but is subject to derivative discovery under paragraph (i)(1) of this section—

- (i) Personal records;
- (ii) Travel vouchers;
- (iii) Speeches;
- (iv) Preliminary drafts;
- (v) Marginalia.

Nuclear Regulatory Commission

§ 2.1021

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been provided electronically.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been provided electronically to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7797, Feb. 26, 1991; 63 FR 71740, Dec. 30, 1998; 69 FR 2266, Jan. 14, 2004]

§ 2.1020 Entry upon land for inspection.

(a) Any party, potential party, or interested governmental participant may serve on any other party, potential party, or interested governmental participant a request to permit entry upon designated land or other property in the possession or control of the party, potential party, or interested governmental participant upon whom the request is served for the purpose of access to raw data, inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 2.1018 of this subpart.

(b) The request may be served on any party, potential party, or interested

governmental participant without leave of the Commission or the Presiding Officer.

(c) The request shall describe with reasonable particularity the land or other property to be inspected either by individual item or by category. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) The party, potential party, or interested governmental participant upon whom the request is served shall serve on the party, potential party, or interested governmental participant submitting the request a written response within ten days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7797, Feb. 26, 1991]

§ 2.1021 First prehearing conference.

(a) In any proceeding involving an application for a construction authorization for a HLW repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to parts 60 or 63 of this chapter, the Commission or the presiding officer will direct the parties, interested governmental participants and any petitioners for intervention, or their counsel, to appear at a specified time and place, within seventy days after the notice of hearing is published, or such other time as the Commission or the presiding officer may deem appropriate, for a conference to:

(1) Permit identification of the key issues in the proceeding;

(2) Take any steps necessary for further identification of the issues;

(3) Consider all intervention petitions to allow the Presiding Officer to make such preliminary or final determination as to the parties and interested

§ 2.1022

10 CFR Ch. I (1-1-07 Edition)

governmental participants, as may be appropriate;

(4) Establish a schedule for further actions in the proceeding; and

(5) Establish a discovery schedule for the proceeding taking into account the objective of meeting the three year time schedule specified in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10134(d).

(b) The Presiding Officer may order any further formal and informal conferences among the parties and interested governmental participants including teleconferences, to the extent that it considers that such a conference would expedite the proceeding.

(c) A prehearing conference held pursuant to this section shall be stenographically reported.

(d) The Presiding Officer shall enter an order which recites the action taken at the conference, the schedule for further actions in the proceeding, and any agreements by the parties, and which identifies the key issues in the proceeding, makes a preliminary or final determination as to the parties and interested governmental participants in the proceeding, and provides for the submission of status reports on discovery.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7797, Feb. 26, 1991; 66 FR 55788, Nov. 2, 2001; 69 FR 2266, Jan. 14, 2004]

§ 2.1022 Second prehearing conference.

(a) The Commission or the presiding officer in a proceeding on either an application for construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, shall direct the parties, interested governmental participants, or their counsel to appear at a specified time and place not later than thirty days after the Safety Evaluation Report is issued by the NRC staff for a conference to consider:

(1) Any amended contentions submitted, which must be reviewed under the criteria in § 2.309(c) of this part;

(2) Simplification, clarification, and specification of the issues;

(3) The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;

(4) Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;

(5) The setting of a hearing schedule;

(6) Establishing a discovery schedule for the proceeding taking into account the objective of meeting the three year time schedule specified in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10134(d); and

(7) Such other matters as may aid in the orderly disposition of the proceeding.

(b) A prehearing conference held pursuant to this section shall be stenographically reported.

(c) The Presiding Officer shall enter an order which recites the action taken at the conference and the agreements by the parties, limits the issues or defines the matters in controversy to be determined in the proceeding, sets a discovery schedule, and sets the hearing schedule.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7797, Feb. 26, 1991; 69 FR 2266, Jan. 14, 2004]

§ 2.1023 Immediate effectiveness.

(a) Pending review and final decision by the Commission, and initial decision resolving all issues before the presiding officer in favor of issuance or amendment of either an authorization to construct a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter will be immediately effective upon issuance except:

(1) As provided in any order issued in accordance with § 2.342 that stays the effectiveness of an initial decision; or

(2) As otherwise provided by the Commission in special circumstances.

(b) The Director of Nuclear Material Safety and Safeguards, notwithstanding the filing or pendency of an

Nuclear Regulatory Commission

§ 2.1023

appeal or a petition for review pursuant to § 2.1015 of this subpart, promptly shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area, or amendments thereto, following an initial decision resolving all issues before the Presiding Officer in favor of the licensing action, upon making the appropriate licensing findings, except—

(1) As provided in paragraph (c) of this section; or

(2) As provided in any order issued in accordance with § 2.342 of this part that stays the effectiveness of an initial decision; or

(3) As otherwise provided by the Commission in special circumstances.

(c)(1) Before the Director of Nuclear Material Safety and Safeguards may issue a construction authorization or a license to receive and possess waste at a geologic repository operations area in accordance with paragraph (b) of this section, the Commission, in the exercise of its supervisory authority over agency proceedings, shall undertake and complete a supervisory examination of those issues contested in the proceeding before the Presiding Officer to consider whether there is any significant basis for doubting that the facility will be constructed or operated with adequate protection of the public health and safety, and whether the Commission should take action to suspend or to otherwise condition the effectiveness of a Presiding Officer decision that resolves contested issues in a proceeding in favor of issuing a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area. This supervisory examination is not part of the adjudicatory proceeding. The Commission shall notify the Director in writing when its supervisory examination conducted in accordance with this paragraph has been completed.

(2) Before the Director of Nuclear Material Safety and Safeguards issues a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area, the Commission shall review those issues that have not been contested in the proceeding before

the Presiding Officer but about which the Director must make appropriate findings prior to the issuance of such a license. The Director shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area only after written notification from the Commission of its completion of its review under this paragraph and of its determination that it is appropriate for the Director to issue such a construction authorization or license. This Commission review of uncontested issues is not part of the adjudicatory proceeding.

(3) No suspension of the effectiveness of a Presiding Officer's initial decision or postponement of the Director's issuance of a construction authorization or license that results from a Commission supervisory examination of contested issues under paragraph (c)(1) of this section or a review of uncontested issues under paragraph (c)(2) of this section will be entered except in writing with a statement of the reasons. Such suspension or postponement will be limited to such period as is necessary for the Commission to resolve the matters at issue. If the supervisory examination results in a suspension of the effectiveness of the Presiding Officer's initial decision under paragraph (c)(1) of this section, the Commission will take review of the decision *sua sponte* and further proceedings relative to the contested matters at issue will be in accordance with procedures for participation by the DOE, the NRC staff, or other parties and interested governmental participants to the Presiding Officer proceeding established by the Commission in its written statement of reasons. If a postponement results from a review under paragraph (c)(2) of this section, comments on the uncontested matters at issue may be filed by the DOE within ten days of service of the Commission's written statement.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7797, Feb. 26, 1991; 66 FR 55789, Nov. 2, 2001; 69 FR 2266, Jan. 14, 2004]

§ 2.1025

§ 2.1025 Authority of the Presiding Officer to dispose of certain issues on the pleadings.

(a) Any party may move, with or without supporting affidavits, for a decision by the Presiding Officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may file an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall annex to any answer opposing the motion a separate, short, and concise, statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement to be filed by the moving party will be deemed to be admitted unless controverted by the statement required to be filed by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto may be entertained. The Presiding Officer may dismiss summarily or hold in abeyance motions filed shortly before the hearing commences or during the hearing if the other parties or the Presiding Officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion.

(b) Affidavits must set forth those facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated therein. The Presiding Officer may permit affidavits to be supplemented or opposed by further affidavits. When a motion for summary disposition is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of its answer; its answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer

10 CFR Ch. I (1-1-07 Edition)

is filed, the decision sought, if appropriate, must be rendered.

(c) The Presiding Officer shall render the decision sought if the filings in the proceeding show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction authorization for a geologic repository operations area, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the authorization must be issued.

[56 FR 7798, Feb. 26, 1991]

§ 2.1026 Schedule.

(a) Subject to paragraphs (b) and (c) of this section, the Presiding Officer shall adhere to the schedule set forth in appendix D of this part.

(b)(1) Pursuant to § 2.307, the presiding officer may approve extensions of no more than fifteen (15) days beyond any required time set forth in this subpart for a filing by a party to the proceeding. Except in the case of exceptional and unforeseen circumstances, requests for extensions of more than fifteen (15) days must be filed no later than five (5) days in advance of the required time set forth in this subpart for a filing by a party to the proceeding.

(2) Extensions beyond 15 days must be referred to the Commission. If the Commission does not disapprove the extension within 10 days of receiving the request, the extension will be effective. If the Commission disapproves the extension, the date which was the subject of the extension request will be set for 5 days after the Commission's disapproval action.

(c)(1) The Presiding Officer may delay the issuance of an order up to thirty days beyond the time set forth for the issuance in appendix D.

(2) If the Presiding Officer anticipates that the issuance of an order will not occur until after the thirty day extension specified in paragraph (c)(1) of this section, the Presiding Officer shall notify the Commission at least ten days in advance of the scheduled date

Nuclear Regulatory Commission

§ 2.1107

for the milestone and provide a justification for the delay.

[56 FR 7798, Feb. 26, 1991, as amended at 69 FR 2266, Jan. 14, 2004]

§ 2.1027 *Sua sponte*.

In any initial decision in a proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Presiding Officer, other than the Commission, shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding.

[69 FR 2266, Jan. 14, 2004]

Subpart K—Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors

SOURCE: 50 FR 41670, Oct. 15, 1985, unless otherwise noted.

§ 2.1101 Purpose.

The regulations in this subpart establish hybrid hearing procedures, as authorized by section 134 of the Nuclear Waste Policy Act of 1982 (96 Stat. 2230), to be used at the request of any party in certain contested proceedings on applications for a license or license amendment to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant. These procedures are intended to encourage and expedite onsite expansion of spent nuclear fuel storage capacity.

§ 2.1103 Scope of subpart K.

The provisions of this subpart, together with subpart C and applicable provisions of subparts G and L of this part, govern all adjudicatory proceedings on applications filed after January 7, 1983, for a license or license amendment under part 50 of this chap-

ter, to expand the spent fuel storage capacity at the site of a civilian nuclear power plant, through the use of high density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means. This subpart also applies to proceedings on applications for a license under part 72 of this chapter to store spent nuclear fuel in an independent spent fuel storage installation located at the site of a civilian nuclear power reactor. This subpart shall not apply to the first application for a license or license amendment to expand the spent fuel storage capacity at a particular site through the use of a new technology not previously approved by the Commission for use at any other nuclear power plant. This subpart shall not apply to proceedings on applications for transfer of a license issued under part 72 of this chapter. Subpart M of this part applies to license transfer proceedings.

[69 FR 2266, Jan. 14, 2004]

§ 2.1105 Definitions.

As used in this part:

(a) *Civilian nuclear power reactor* means a civilian nuclear power plant required to be licensed as a utilization facility under section 103 or 104(b) of the Atomic Energy Act of 1954.

(b) *Spent nuclear fuel* means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

§ 2.1107 Notice of proposed action.

In connection with each application filed after January 7, 1983, for a license or an amendment to a license to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant, for which the Commission has not found that a hearing is required in the public interest, for which an adjudicatory hearing has not yet been convened, and for which a notice of proposed action has not yet been published as of the effective date of this subpart, the Commission will, prior to acting thereon, cause to be

§2.1109

10 CFR Ch. I (1-1-07 Edition)

published in the FEDERAL REGISTER a notice of proposed action in accordance with §2.105. The notice of proposed action will identify the availability of the hybrid hearing procedures in this subpart, specify that any party may invoke these procedures by filing a timely request for oral argument under §2.1109, and provide that if a request for oral argument is granted, any hearing held on the application shall be conducted in accordance with the procedures in this subpart.

§2.1109 Requests for oral argument.

(a)(1) In its request for hearing/petition to intervene filed in accordance with §2.309 or in the applicant's or the NRC staff's response to a request for a hearing/petition to intervene, any party may invoke the hybrid hearing procedures in this Subpart by requesting an oral argument. If it is determined that a hearing will be held, the presiding officer shall grant a timely request for oral argument.

(2) The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for failure to file on time and after providing the other parties an opportunity to respond to the untimely request.

(b) The presiding officer shall issue a written order ruling on any requests for oral argument. If the presiding officer grants a request for oral argument, the order shall include a schedule for discovery and subsequent oral argument with respect to the admitted contentions.

(c) If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, the presiding officer shall conduct the proceeding in accordance with the subpart under which the proceeding was initially conducted as determined in accordance with §2.310.

[50 FR 41670, Oct. 15, 1985, as amended at 69 FR 2267, Jan. 14, 2004]

§2.1113 Oral argument.

(a) Twenty-five (25) days prior to the date set for oral argument, each party, including the NRC staff, shall submit to the presiding officer a detailed written summary of all the facts, data, and arguments which are known to the

party at such time and on which the party proposes to rely at the oral argument either to support or to refute the existence of a genuine and substantial dispute of fact. Each party shall also submit all supporting facts and data in the form of sworn written testimony or other sworn written submission. Each party's written summary and supporting information shall be simultaneously served on all other parties to the proceeding.

(b) Ten (10) days prior to the date set for oral argument, each party, including the NRC staff, may submit to the presiding officer a reply limited to addressing whether the written summaries, facts, data, and arguments filed under paragraph (a) of this section support or refute the existence of a genuine and substantial dispute of fact. Each party's reply shall be simultaneously served on all other parties to the proceeding.

(c) Only facts and data in the form of sworn written testimony or other sworn written submission may be relied on by the parties during oral argument, and the presiding officer shall consider those facts and data only if they are submitted in that form.

[50 FR 41670, Oct. 15, 1985, as amended at 69 FR 2267, Jan. 14, 2004]

§2.1115 Designation of issues for adjudicatory hearing.

(a) After due consideration of the oral presentation and the written facts and data submitted by the parties and relied on at the oral argument, the presiding officer shall promptly by written order:

(1) Designate any disputed issues of fact, together with any remaining issues of law, for resolution in an adjudicatory hearing; and

(2) Dispose of any issues of law or fact not designated for resolution in an adjudicatory hearing.

With regard to each issue designated for resolution in an adjudicatory hearing, the presiding officer shall identify the specific facts that are in genuine and substantial dispute, the reason why the decision of the Commission is likely to depend on the resolution of that dispute, and the reason why an adjudicatory hearing is likely to resolve the dispute. With regard to issues not

Nuclear Regulatory Commission

§ 2.1200

designated for resolution in an adjudicatory hearing, the presiding officer shall include a brief statement of the reasons for the disposition. If the presiding officer finds that there are no disputed issues of fact or law requiring resolution in an adjudicatory hearing, the presiding officer shall also dismiss the proceeding.

(b) No issue of law or fact shall be designated for resolution in an adjudicatory hearing unless the presiding officer determines that:

(1) There is a genuine and substantial dispute of fact which can only be resolved with sufficient accuracy by the introduction of evidence in an adjudicatory hearing; and

(2) The decision of the Commission is likely to depend in whole or in part on the resolution of that dispute.

(c) In making a determination under paragraph (b) of this section, the presiding officer shall not consider:

(1) Any issue relating to the design, construction, or operation of any civilian nuclear power reactor already licensed to operate at the site, or any civilian nuclear power reactor for which a construction permit has been granted at the site, unless the presiding officer determines that any such issue substantially affects the design, construction, or operation of the facility or activity for which a license application, authorization, or amendment to expand the spent nuclear fuel storage capacity is being considered; or

(2) Any siting or design issue fully considered and decided by the Commission in connection with the issuance of a construction permit or operating license for a civilian nuclear power reactor at that site, unless (i) such issue results from any revision of siting or design criteria by the Commission following such decision; and (ii) the presiding officer determines that such issue substantially affects the design, construction, or operation of the facility or activity for which a license application, authorization, or amendment to expand the spent nuclear fuel storage capacity is being considered.

(d) The provisions of paragraph (c) of this section shall apply only with respect to licenses, authorizations, or amendments to licenses or authorizations applied for under the Atomic En-

ergy Act of 1954, as amended, before December 31, 2005.

(e) Unless the presiding officer disposes of all issues and dismisses the proceeding, appeals from the presiding officer's order disposing of issues and designating one or more issues for resolution in an adjudicatory hearing are interlocutory and must await the end of the proceeding.

[50 FR 41671, Oct. 15, 1985; 50 FR 45398, Oct. 31, 1985]

§ 2.1117 Burden of proof.

The applicant bears the ultimate burden of proof (risk of non-persuasion) with respect to the contention in the proceeding. The proponent of the request for an adjudicatory hearing bears the burden of demonstrating under § 2.1115(b) that an adjudicatory hearing should be held.

[69 FR 2267, Jan. 14, 2004]

§ 2.1119 Applicability of other sections.

In proceedings subject to this part, the provisions of subparts A, C, and L of this part are also applicable, except where inconsistent with the provisions of this subpart.

[69 FR 2267, Jan. 14, 2004]

Subpart L—Informal Hearing Procedures for NRC Adjudications

SOURCE: 69 FR 2267, Jan. 14, 2004, unless otherwise noted.

§ 2.1200 Scope of subpart L.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act, and 10 CFR part 2, except for proceedings on the licensing of the construction and operation of a uranium enrichment facility, proceedings on an initial application for construction authorization for a high-level radioactive waste geologic repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository

§ 2.1201

operations area, proceedings on enforcement matters unless all parties otherwise agree and request the application of Subpart L procedures, and proceedings for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition.

§ 2.1201 Definitions.

The definitions of terms contained in § 2.4 apply to this subpart unless a different definition is provided in this subpart.

§ 2.1202 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its own review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. When the NRC staff takes its action, it shall notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's position on the matters in controversy before the presiding officer with respect to the staff action. The NRC staff's action on the matter is effective upon issuance by the staff, except in matters involving:

(1) An application to construct and/or operate a production or utilization facility;

(2) An application for an amendment to a construction authorization for a high-level radioactive waste repository at a geologic repository operations area falling under either 10 CFR 60.32(c)(1) or 10 CFR part 63;

(3) An application for the construction and operation of an independent spent fuel storage installation (ISFSI) located at a site other than a reactor site or a monitored retrievable storage installation (MRS) under 10 CFR part 72; and

(4) Production or utilization facility licensing actions that involve signifi-

10 CFR Ch. I (1-1-07 Edition)

cant hazards considerations as defined in 10 CFR 50.92.

(b)(1) The NRC staff is not required to be a party to a proceeding under this subpart, except where:

(i) The proceeding involves an application denied by the NRC staff or an enforcement action proposed by the NRC staff; or

(ii) The presiding officer determines that the resolution of any issue in the proceeding would be aided materially by the NRC staff's participation in the proceeding as a party and orders the staff to participate as a party for the identified issue. In the event that the presiding officer determines that the NRC staff's participation is necessary, the presiding officer shall issue an order identifying the issue(s) on which the staff is to participate as well as setting forth the basis for the determination that staff participation will materially aid in resolution of the issue(s).

(2) Within fifteen (15) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required by § 2.336(b)(3) through (5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice.

(3) Once the NRC staff chooses to participate as a party, it shall have all the rights and responsibilities of a party with respect to the admitted contention/matter in controversy on which the staff chooses to participate.

§ 2.1203 Hearing file; prohibition on discovery.

(a)(1) Within thirty (30) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall file in the docket, present to the presiding officer, and make available

to the parties to the proceeding a hearing file.

(2) The hearing file must be made available to the parties either by service of hard copies or by making the file available at the NRC Web site, *http://www.nrc.gov*.

(3) The hearing file also must be made available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

(b) The hearing file consists of the application, if any, and any amendment to the application, and, when available, any NRC environmental impact statement or assessment and any NRC report related to the proposed action, as well as any correspondence between the applicant/licensee and the NRC that is relevant to the proposed action. Hearing file documents already available at the NRC Web site and/or the NRC Public Document Room when the hearing request/petition to intervene is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

(c) The NRC staff has a continuing duty to keep the hearing file up to date with respect to the materials set forth in paragraph (b) of this section and to provide those materials as required in paragraphs (a) and (b) of this section.

(d) Except as otherwise permitted by subpart C of this part, a party may not seek discovery from any other party or the NRC or its personnel, whether by document production, deposition, interrogatories or otherwise.

§ 2.1204 Motions and requests.

(a) General requirements. In proceedings under this subpart, requirements for motions and requests and responses to them are as specified in § 2.323.

(b) Requests for cross-examination by the parties. (1) In any oral hearing under this subpart, a party may file a motion with the presiding officer to permit cross-examination by the parties on particular admitted contentions or issues. The motion must be accom-

panied by a cross-examination plan containing the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination.

(2) The cross-examination plan may be submitted only to the presiding officer and must be kept by the presiding officer in confidence until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide each cross-examination plan to the Commission's Secretary for inclusion in the official record of the proceeding.

(3) The presiding officer shall allow cross-examination by the parties only if the presiding officer determines that cross-examination by the parties is necessary to ensure the development of an adequate record for decision.

§ 2.1205 Summary disposition.

(a) Unless the presiding officer or the Commission directs otherwise, motions for summary disposition may be submitted to the presiding officer by any party no later than forty-five (45) days before the commencement of hearing. The motions must be in writing and must include a written explanation of the basis of the motion, and affidavits to support statements of fact. Motions for summary disposition must be served on the parties and the Secretary at the same time that they are submitted to the presiding officer.

(b) Any other party may serve an answer supporting or opposing the motion within twenty (20) days after service of the motion.

(c) The presiding officer shall issue a determination on each motion for summary disposition no later than fifteen (15) days before the date scheduled for commencement of hearing. In ruling on motions for summary disposition, the presiding officer shall apply the standards for summary disposition set forth in subpart G of this part.

§ 2.1206 Informal hearings.

Hearings under this subpart will be oral hearings as described in § 2.1207,

§ 2.1207

10 CFR Ch. I (1-1-07 Edition)

unless, within fifteen (15) days of the service of the order granting the request for hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written submissions. A motion to hold a hearing consisting of written submissions will not be entertained unless there is unanimous consent of the parties.

§ 2.1207 Process and schedule for submissions and presentations in an oral hearing.

(a) Unless otherwise limited by this subpart or by the presiding officer, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the admitted contentions. These materials must be filed on the dates set by the presiding officer.

(2) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants. These materials must be filed within twenty (20) days of the service of the materials submitted under paragraph (a)(1) of this section unless the presiding officer directs otherwise.

(3)(i) Proposed questions for the presiding officer to consider for propounding to the persons sponsoring the testimony. Unless the presiding officer directs otherwise, these questions must be received by the presiding officer no later than twenty (20) days after the service of the materials submitted under paragraph (a)(1) of this section, unless that date is less than five (5) days before the scheduled commencement of the oral hearing, in which case the questions must be received by the presiding officer no later than five (5) days before the scheduled commencement of the hearing. Proposed questions need not be filed with any other party.

(ii) Proposed questions directed to rebuttal testimony for the presiding officer to consider for propounding to persons sponsoring the testimony. Unless the presiding officer directs otherwise, these questions must be received by the presiding officer no later than seven (7) days after the service of the

rebuttal testimony submitted under paragraph (a)(2) of this section, unless that date is less than five (5) days before the scheduled commencement of the oral hearing, in which case the questions must be received by the presiding officer no later than five (5) days before the scheduled commencement of the hearing. Proposed questions directed to rebuttal need not be filed with any other party.

(iii) Questions submitted under paragraphs (a)(3)(i) and (ii) of this section may be propounded at the discretion of the presiding officer. All questions must be kept by the presiding officer in confidence until they are either propounded by the presiding officer, or until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide all proposed questions to the Commission's Secretary for inclusion in the official record of the proceeding.

(b) Oral hearing procedures. (1) The oral hearing must be transcribed.

(2) Written testimony will be received into evidence in exhibit form.

(3) Participants may designate and present their own witnesses to the presiding officer.

(4) Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations or his delegee for that purpose.

(5) The presiding officer may accept written testimony from a person unable to appear at the hearing, and may request that person to respond in writing to questions.

(6) Participants and witnesses will be questioned orally or in writing and only by the presiding officer or the presiding officer's designee (*e.g.*, a Special Assistant appointed under § 2.322). The presiding officer will examine the participants and witnesses using questions prepared by the presiding officer or the presiding officer's designee, questions submitted by the participants at the discretion of the presiding officer, or a combination of both. Questions may be addressed to individuals or to panels of participants or witnesses. No party may submit proposed questions to the presiding officer at the hearing, except upon request by, and in the sole discretion of, the presiding officer.

Nuclear Regulatory Commission

§ 2.1210

§ 2.1208 Process and schedule for a hearing consisting of written presentations.

(a) Unless otherwise limited by this subpart or by the presiding officer, participants in a hearing consisting of written presentations may submit:

(1) Initial written statements of position and written testimony with supporting affidavits on the admitted contentions. These materials must be filed on the dates set by the presiding officer;

(2) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and testimony of witnesses and other participants, and proposed written questions for the presiding officer to consider for submission to the persons sponsoring testimony under paragraph (a)(1) of this section. These materials must be filed within twenty (20) days of the service of the materials submitted under paragraph (a)(1) of this section unless the presiding officer directs otherwise;

(3) Written questions on the written responses and rebuttal testimony submitted under paragraph (a)(2) of this section, which the presiding officer may, in his or her discretion, require the persons offering the written responses and rebuttal testimony to provide responses. These questions must be filed within seven (7) days of service of the materials submitted under paragraph (a)(2) of this section unless the presiding officer directs otherwise; and

(4) Written concluding statements of position on the contentions. These statements shall be filed within twenty (20) days of the service of written responses to the presiding officer's questions to the participants or, in the absence of questions from the presiding officer, within twenty (20) days of the service of the materials submitted under paragraph (a)(2) of this section unless the presiding officer directs otherwise.

(b) The presiding officer may formulate and submit written questions to the participants that he or she considers appropriate to develop an adequate record.

§ 2.1209 Findings of fact and conclusions of law.

Each party shall file written post-hearing proposed findings of fact and conclusions of law on the contentions addressed in an oral hearing under § 2.1207 or a written hearing under § 2.1208 within thirty (30) days of the close of the hearing or at such other time as the presiding officer directs.

§ 2.1210 Initial decision and its effect.

(a) Unless the Commission directs that the record be certified to it in accordance with paragraph (b) of this section, the presiding officer shall render an initial decision after completion of an informal hearing under this subpart. That initial decision constitutes the final action of the Commission on the contested matter forty (40) days after the date of issuance, unless:

(1) Any party files a petition for Commission review in accordance with § 2.1212;

(2) The Commission, in its discretion, determines that the presiding officer's initial decision is inconsistent with the staff's action as described in the notice required by § 2.1202(a) and that the inconsistency warrants Commission review, in which case the Commission will review the initial decision; or

(3) The Commission takes review of the decision sua sponte.

(b) The Commission may direct that the presiding officer certify the record to it without an initial decision and prepare a final decision if the Commission finds that due and timely execution of its functions warrants certification.

(c) An initial decision must be in writing and must be based only upon information in the record or facts officially noticed. The record must include all information submitted in the proceeding with respect to which all parties have been given reasonable prior notice and an opportunity to comment as provided in §§ 2.1207 or 2.1208. The initial decision must include:

(1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact or law admitted as part of the contentions in the proceeding;

§ 2.1211

(2) The appropriate ruling, order, or grant or denial of relief with its effective date;

(3) The action the NRC staff shall take upon transmittal of the decision to the NRC staff under paragraph (e) of this section, if the initial decision is inconsistent with the NRC staff action as described in the notice required by § 2.1202(a); and

(4) The time within which a petition for Commission review may be filed, the time within which any answers to a petition for review may be filed, and the date when the decision becomes final in the absence of a petition for Commission review or Commission *sua sponte* review.

(d) Pending review and final decision by the Commission, an initial decision resolving all issues before the presiding officer is immediately effective upon issuance except:

(1) As provided in any order issued in accordance with § 2.1211 that stays the effectiveness of an initial decision; or

(2) As otherwise provided by this part (*e.g.*, § 2.340) or by the Commission in special circumstances.

(e) Once an initial decision becomes final, the Secretary shall transmit the decision to the NRC staff for action in accordance with the decision.

§ 2.1211 Immediate effectiveness of initial decision directing issuance or amendment of licenses under part 61 of this chapter.

An initial decision directing the issuance of a license under part 61 of this chapter (relating to land disposal of radioactive waste or any amendments to such a license authorizing actions which may significantly affect the health and safety of the public) will become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards may not issue a license under part 61 of this chapter, or any amendment to such a license that may significantly affect the health and safety of the public until expressly authorized to do so by the Commission.

§ 2.1212 Petitions for Commission review of initial decisions.

Parties may file petitions for review of an initial decision under this sub-

10 CFR Ch. I (1–1–07 Edition)

part in accordance with the procedures set out in § 2.341. Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of an agency action.

§ 2.1213 Application for a stay.

(a) Any application for a stay of the effectiveness of the NRC staff's action on a matter involved in a hearing under this subpart must be filed with the presiding officer within five (5) days of the issuance of the notice of the NRC staff's action under § 2.1202(a) and must be filed and considered in accordance with paragraphs (b), (c) and (d) of this section.

(b) An application for a stay of the NRC staff's action may not be longer than ten (10) pages, exclusive of affidavits, and must contain:

(1) A concise summary of the action which is requested to be stayed; and

(2) A concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.

(c) Within ten (10) days after service of an application for a stay of the NRC staff's action under this section, any party and/or the NRC staff may file an answer supporting or opposing the granting of a stay. Answers may not be longer than ten (10) pages, exclusive of affidavits, and must concisely address the matters in paragraph (b) of this section as appropriate. Further replies to answers will not be entertained.

(d) In determining whether to grant or deny an application for a stay of the NRC staff's action, the following will be considered:

(1) Whether the requestor will be irreparably injured unless a stay is granted;

(2) Whether the requestor has made a strong showing that it is likely to prevail on the merits;

(3) Whether the granting of a stay would harm other participants; and

(4) Where the public interest lies.

(e) Any application for a stay of the effectiveness of the presiding officer's initial decision or action under this subpart shall be filed with the Commission in accordance with § 2.342.

Subpart M—Procedures for Hearings on License Transfer Applications

SOURCE: 63 FR 66730, Dec. 3, 1998, unless otherwise noted.

§ 2.1300 Scope of subpart M.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings on an application for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. This subpart provides the only mechanism for requesting hearings on license transfer requests, unless contrary case specific orders are issued by the Commission.

[69 FR 2270, Jan. 14, 2004]

§ 2.1301 Public notice of receipt of a license transfer application.

(a) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application at the NRC Web site, <http://www.nrc.gov>.

(b) The Commission will also publish in the FEDERAL REGISTER a notice of receipt of an application for approval of a license transfer involving 10 CFR part 50 and part 52 licenses, major fuel cycle facility licenses issued under part 70, or part 72 licenses. This notice constitutes the notice required by § 2.105 with respect to all matters related to the application requiring NRC approval.

(c) Periodic lists of applications received may be obtained upon request addressed to the NRC Public Document Room, US Nuclear Regulatory Commission, Washington, DC 20555-0001.

[63 FR 66730, Dec. 3, 1998, as amended at 64 FR 48949, Sept. 9, 1999]

§ 2.1302 Notice of withdrawal of an application.

The Commission will notice the withdrawal of an application by publishing the notice of withdrawal in the same manner as the notice of receipt of the

application was published under § 2.1301.

§ 2.1303 Availability of documents.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each application for a license transfer requiring Commission approval will be placed at the NRC Web site, <http://www.nrc.gov>, when available:

(a) The license transfer application and any associated requests;

(b) Commission correspondence with the applicant or licensee related to the application;

(c) FEDERAL REGISTER notices;

(d) The NRC staff Safety Evaluation Report (SER).

(e) Any NRC staff order which acts on the license transfer application; and

(f) If a hearing is held, the hearing record and decision.

[63 FR 66730, Dec. 3, 1998, as amended at 64 FR 48949, Sept. 9, 1999]

§ 2.1304 Hearing procedures.

The procedures in this subpart will constitute the exclusive basis for hearings on license transfer applications for all NRC specific licenses.

§ 2.1305 Written comments.

(a) As an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding license transfer applications. The Commission will consider and, if appropriate, respond to these comments, but these comments do not otherwise constitute part of the decisional record.

(b) These comments should be submitted within 30 days after public notice of receipt of the application and addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

(c) The Commission will provide the applicant with a copy of the comments. Any response the applicant chooses to make to the comments must be submitted within 10 days of service of the comments on the applicant. Such responses do not constitute part of the decisional record.

§ 2.1308

10 CFR Ch. I (1–1–07 Edition)

§ 2.1308 Oral hearings.

Hearings under this subpart will be oral hearings, unless, within 15 days of the service of the notice or order granting the hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written comments. No motion to hold a hearing consisting of written comments will be entertained absent consent of all the parties.

[69 FR 2270, Jan. 14, 2004]

§ 2.1309 Notice of oral hearing.

(a) A notice of oral hearing will—

(1) State the time, place, and issues to be considered;

(2) Provide names and addresses of participants,

(3) Specify the time limit for participants and others to indicate whether they wish to present views;

(4) Specify the schedule for the filing of written testimony, statements of position, proposed questions for the Presiding Officer to consider, and rebuttal testimony consistent with the schedule provisions of § 2.1321.

(5) Specify that the oral hearing shall commence within 15 days of the date for submittal of rebuttal testimony unless otherwise ordered;

(6) State any other instructions the Commission deems appropriate;

(7) If so determined by the NRC staff or otherwise directed by the Commission, direct that the staff participate as a party with respect to some or all issues.

(b) If the Commission is not the Presiding Officer, the notice of oral hearing will also state:

(1) When the jurisdiction of the Presiding Officer commences and terminates;

(2) The powers of the Presiding Officer;

(3) Instructions to the Presiding Officer to certify promptly the completed hearing record to the Commission without a recommended or preliminary decision.

§ 2.1310 Notice of hearing consisting of written comments.

A notice of hearing consisting of written comments will:

(a) State the issues to be considered;

(b) Provide the names and addresses of participants;

(c) Specify the schedule for the filing of written testimony, statements of position, proposed questions for the Presiding Officer to consider for submission to the other parties, and rebuttal testimony, consistent with the schedule provisions of § 2.1321.

(d) State any other instructions the Commission deems appropriate.

§ 2.1311 Conditions in a notice or order.

(a) A notice or order granting a hearing or permitting intervention shall—

(1) Restrict irrelevant or duplicative testimony; and

(2) Require common interests to be represented by a single participant.

(b) If a participant's interests do not extend to all the issues in the hearing, the notice or order may limit her/his participation accordingly.

§ 2.1315 Generic determination regarding license amendments to reflect transfers.

(a) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action, involves respectively, “no significant hazards consideration,” or “no genuine issue as to whether the health and safety of the public will be significantly affected.”

(b) Where administrative license amendments are necessary to reflect an approved transfer, such amendments will be included in the order that approves the transfer. Any challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.

[63 FR 66730, Dec. 3, 1998, as amended at 69 FR 2270, Jan. 14, 2004]

§ 2.1316 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its Safety Evaluation Report (SER), the staff is

Nuclear Regulatory Commission

§ 2.1321

expected to promptly issue approval or denial of license transfer requests. Notice of such action shall be promptly transmitted to the Presiding Officer and parties to the proceeding.

(b) Except as otherwise directed in accordance with § 2.1309(a)(7), the NRC staff is not required to be a party to proceedings under this subpart but will offer into evidence its SER associated with the transfer application and provide one or more sponsoring witnesses.

(c) If the NRC staff desires to participate as a party, the staff shall notify the Presiding Officer and the parties and shall thereupon be deemed to be a party with all the rights and responsibilities of a party.

§ 2.1319 Presiding Officer.

(a) The Commission will ordinarily be the Presiding Officer at a hearing under this part. However, the Commission may provide in a hearing notice that one or more Commissioners, or any other person permitted by law, will preside.

(b) A participant may submit a written motion for the disqualification of any person presiding. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. If the Presiding Officer does not grant the motion or the person does not disqualify himself and the Presiding Officer or such other person is not the Commission or a Commissioner, the Commission will decide the matter.

(c) If any person presiding deems himself or herself disqualified, he or she shall withdraw by notice on the record after notifying the Commission.

(d) If a Presiding Officer becomes unavailable, the Commission will designate a replacement.

(e) Any motion concerning the designation of a replacement Presiding Officer shall be made within 5 days after the designation.

(f) Unless otherwise ordered by the Commission, the jurisdiction of a Presiding Officer other than the Commission commences as designated in the hearing notice and terminates upon certification of the hearing record to the Commission, or when the Presiding Officer is disqualified.

§ 2.1320 Responsibility and power of the Presiding Officer in an oral hearing.

(a) The Presiding Officer in any oral hearing shall conduct a fair hearing, develop a record that will contribute to informed decisionmaking, and, within the framework of the Commission's orders, have the power necessary to achieve these ends, including the power to:

(1) Take action to avoid unnecessary delay and maintain order;

(2) Dispose of procedural requests;

(3) Question participants and witnesses, and entertain suggestions as to questions which may be asked of participants and witnesses.

(4) Order consolidation of participants;

(5) Establish the order of presentation;

(6) Hold conferences before or during the hearing;

(7) Establish time limits;

(8) Limit the number of witnesses; and

(9) Strike or reject duplicative, unreliable, immaterial, or irrelevant presentations.

(b) Where the Commission itself does not preside:

(1) The Presiding Officer may certify questions or refer rulings to the Commission for decision;

(2) Any hearing order may be modified by the Commission; and

(3) The Presiding Officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented.

§ 2.1321 Participation and schedule for submission in a hearing consisting of written comments.

Unless otherwise limited by this subpart or by the Commission, participants in a hearing consisting of written comments may submit:

(a) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials must be filed on the date set by the Commission or the presiding officer.

(b) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and

§ 2.1322

10 CFR Ch. I (1–1–07 Edition)

testimony of other participants, and proposed written questions for the Presiding Officer to consider for submittal to persons sponsoring testimony submitted under paragraph (a) of this section. These materials shall be filed within 20 days of the filing of the materials submitted under paragraph (a) of this section, unless the Commission or Presiding Officer directs otherwise. Proposed written questions directed to rebuttal testimony for the Presiding Officer to consider for submittal to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(c) Written concluding statements of position on the issues. These materials shall be filed within 20 days of the filing of the materials submitted under paragraph (b) of this section, unless the Commission or the Presiding Officer directs otherwise.

[63 FR 66730, Dec. 3, 1998, as amended at 69 FR 2271, Jan. 14, 2004]

§ 2.1322 Participation and schedule for submissions in an oral hearing.

(a) Unless otherwise limited by this subpart or by the Commission, participants in an oral hearing may submit and sponsor in the hearings:

(1) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials must be filed on the date set by the Commission or the presiding officer.

(2)(i) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants;

(ii) Proposed questions for the Presiding Officer to consider for propounding to persons sponsoring testimony.

(3) These materials must be filed within 20 days of the filing of the materials submitted under paragraph (a)(1) of this section, unless the Commission or Presiding Officer directs otherwise.

(4) Proposed questions directed to rebuttal testimony for the Presiding Officer to consider for propounding to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(b) The oral hearing should commence within 65 days of the date of the

Commission's notice granting a hearing unless the Commission or Presiding Officer directs otherwise. Ordinarily, questioning in the oral hearing will be conducted by the Presiding Officer, using either the Presiding Officer's questions or questions submitted by the participants or a combination of both.

(c) Written post-hearing statements of position on the issues addressed in the oral hearing may be submitted within 20 days of the close of the oral hearing.

(d) The Commission, on its own motion, or in response to a request from a Presiding Officer other than the Commission, may use additional procedures, such as direct and cross-examination, or may convene a formal hearing under subpart G of this part on specific and substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing. The staff will be a party in any such formal hearing. Neither the Commission nor the Presiding Officer will entertain motions from the parties that request such special procedures or formal hearings.

[63 FR 66730, Dec. 3, 1998, as amended at 69 FR 2271, Jan. 14, 2004]

§ 2.1323 Presentation of testimony in an oral hearing.

(a) All direct testimony in an oral hearing shall be filed no later than 15 days before the hearing or as otherwise ordered or allowed pursuant to the provisions of § 2.1322.

(b) Written testimony will be received into evidence in exhibit form.

(c) Participants may designate and present their own witnesses to the Presiding Officer.

(d) Testimony for the NRC staff will be presented only by persons designated for that purpose by either the Executive Director for Operations or a delegee of the Executive Director for Operations.

(e) Participants and witnesses will be questioned orally or in writing and only by the Presiding Officer. Questions may be addressed to individuals or to panels of participants or witnesses.

Nuclear Regulatory Commission

§ 2.1331

(f) The Presiding Officer may accept written testimony from a person unable to appear at the hearing, and may request him or her to respond to questions.

(g) No subpoenas will be granted at the request of participants for attendance and testimony of participants or witnesses or the production of evidence.

[63 FR 66730, Dec. 3, 1998, as amended at 69 FR 2271, Jan. 14, 2004]

§ 2.1324 Appearance in an oral hearing.

(a) A participant may appear in a hearing on her or his own behalf or be represented by an authorized representative.

(b) A person appearing shall file a written notice stating her or his name, address and telephone number, and if an authorized representative, the basis of her or his eligibility and the name and address of the participant on whose behalf she or he appears.

(c) A person may be excluded from a hearing for disorderly, dilatory or contemptuous conduct, provided he or she is informed of the grounds and given an opportunity to respond.

§ 2.1325 Motions and requests.

(a) Motions and requests shall be addressed to the Presiding Officer, and, if written, also filed with the Secretary and served on other participants.

(b) Other participants may respond to the motion or request. Responses to written motions or requests shall be filed within 5 days after service unless the Commission or Presiding Officer directs otherwise.

(c) The Presiding Officer may entertain motions for extension of time and changes in schedule in accordance with paragraphs (a) and (b) of this section.

(d) When the Commission does not preside, in response to a motion or request, the Presiding Officer may refer a ruling or certify a question to the Commission for decision and notify the participants.

(e) Unless otherwise ordered by the Commission, a motion or request, or the certification of a question or referral of a ruling, shall not stay or extend any aspect of the hearing.

§ 2.1327 Application for a stay of the effectiveness of NRC staff action on license transfer.

(a) Any application for a stay of the effectiveness of the NRC staff's order on the license transfer application shall be filed with the Commission within 5 days of the issuance of the notice of staff action pursuant to § 2.1316(a).

(b) An application for a stay must be no longer than 10 pages, exclusive of affidavits, and must contain:

(1) A concise summary of the action which is requested to be stayed; and

(2) A concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.

(c) Within 10 days after service of an application for a stay under this section, any participant may file an answer supporting or opposing the granting of a stay. Answers must be no longer than 10 pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section, as appropriate. No further replies to answers will be entertained.

(d) In determining whether to grant or deny an application for a stay, the Commission will consider:

(1) Whether the requestor will be irreparably injured unless a stay is granted;

(2) Whether the requestor has made a strong showing that it is likely to prevail on the merits;

(3) Whether the granting of a stay would harm other participants; and

(4) Where the public interest lies.

§ 2.1331 Commission action.

(a) Upon completion of a hearing, the Commission will issue a written opinion including its decision on the license transfer application and the reasons for the decision.

(b) The decision on issues designated for hearing under § 2.309 will be based on the record developed at hearing.

[63 FR 66730, Dec. 3, 1998, as amended at 69 FR 2271, Jan. 14, 2004]

Subpart N—Expedited Proceedings with Oral Hearings

SOURCE: 69 FR 2271, Jan. 14, 2004, unless otherwise noted.

§ 2.1400 Purpose and scope of subpart N.

The purpose of this subpart is to provide simplified procedures for the expeditious resolution of disputes among parties in an informal hearing process. The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 10 CFR part 2 except for proceedings on the licensing of the construction and operation of a uranium enrichment facility, proceedings on an initial application for authorization to construct a high-level radioactive waste repository at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings on an initial application for authorization to receive and possess high-level radioactive waste at a geologic repository operations area, proceedings on an initial application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, proceedings on enforcement matters unless all parties otherwise agree and request the application of subpart N procedures, and proceedings for the direct or indirect control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition.

§ 2.1401 Definitions.

The definitions of terms in § 2.4 apply to this subpart unless a different definition is provided in this subpart.

§ 2.1402 General procedures and limitations; requests for other procedures.

(a) Generally-applicable procedures. For proceedings conducted under this subpart:

(1) Except where provided otherwise in this subpart or specifically requested by the presiding officer or the

Commission, written pleadings and briefs (regardless of whether they are in the form of a letter, a formal legal submission, or otherwise) are not permitted;

(2) Requests to schedule a conference to consider oral motions may be in writing and served on the Presiding officer and the parties;

(3) Motions for summary disposition before the hearing has concluded and motions for reconsideration to the presiding officer or the Commission are not permitted;

(4) All motions must be presented and argued orally;

(5) The presiding officer will reflect all rulings on motions and other requests from the parties in a written decision. A verbatim transcript of oral rulings satisfies this requirement;

(6) Except for the information disclosure requirements set forth in subpart C of this part, requests for discovery will not be entertained; and

(7) The presiding officer may issue written orders and rulings necessary for the orderly and effective conduct of the proceeding;

(b) Other procedures. If it becomes apparent at any time before a hearing is held that a proceeding selected for adjudication under this subpart is not appropriate for application of this subpart, the presiding officer or the Commission may, on its own motion or at the request of a party, order the proceeding to continue under another appropriate subpart. If a proceeding under this subpart is discontinued because the proceeding is not appropriate for application of this subpart, the presiding officer may issue written orders necessary for the orderly continuation of the hearing process under another subpart.

(c) Request for cross-examination. A party may present an oral motion to the presiding officer to permit cross-examination by the parties on particular admitted contentions or issues. The presiding officer may allow cross-examination by the parties if he or she determines that cross-examination by the parties is necessary for the development of an adequate record for decision.

Nuclear Regulatory Commission

§ 2.1404

§ 2.1403 Authority and role of the NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its own review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to issue its approval or denial of the application promptly, or take other appropriate action on the matter which is the subject of the hearing. When the NRC staff takes its action, it shall notify the presiding officer and the parties to the proceeding of its action. The NRC staff's action on the matter is effective upon issuance, except in matters involving:

(1) An application to construct and/or operate a production or utilization facility;

(2) An application for the construction and operation of an independent spent fuel storage installation located at a site other than a reactor site or a monitored retrievable storage facility under 10 CFR part 72; or

(3) Production or utilization facility licensing actions that involve significant hazards considerations as defined in 10 CFR 50.92.

(b)(1) The NRC staff is not required to be a party to proceedings under this subpart, except where:

(i) The proceeding involves an application denied by the NRC staff or an enforcement action proposed by the staff; or

(ii) The presiding officer determines that the resolution of any issue in the proceeding would be aided materially by the NRC staff's participation in the proceeding as a party and orders the staff to participate as a party for the identified issue. In the event that the presiding officer determines that the NRC staff's participation is necessary, the presiding officer shall issue an order identifying the issue(s) on which the staff is to participate as well as setting forth the basis for the determination that staff participation will materially aid in resolution of the issue(s).

(2) Within fifteen (15) days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff shall notify the presiding officer and

the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff shall notify the presiding officer and the parties, identify the contentions on which it wishes to participate as a party, and make the disclosures required by § 2.336(b)(3) through (5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice.

(3) Once the NRC staff chooses to participate as a party, it shall have all the rights and responsibilities of a party with respect to the admitted contention/matter in controversy on which the staff chooses to participate.

§ 2.1404 Prehearing conference.

(a) No later than forty (40) days after the order granting requests for hearing/petitions to intervene, the presiding officer shall conduct a prehearing conference. At the discretion of the presiding officer, the prehearing conference may be held in person or by telephone or through the use of video conference technology.

(b) At the prehearing conference, each party shall provide the presiding officer and the parties participating in the conference with a statement identifying each witness the party plans to present at the hearing and a written summary of the oral and written testimony of each proposed witness. If the prehearing conference is not held in person, each party shall forward the summaries of the party's witnesses' testimony to the presiding officer and the other parties by such means that will ensure the receipt of the summaries by the commencement of the prehearing conference.

(c) At the prehearing conference, the parties shall describe the results of their efforts to settle their disputes or narrow the contentions that remain for hearing, provide an agreed statement of facts, if any, identify witnesses that they propose to present at hearing, provide questions or question areas that they would propose to have the presiding officer cover with the witnesses at the hearing, and discuss other pertinent matters. At the conclusion of the conference, the presiding officer

§2.1405

will issue an order specifying the issues to be addressed at the hearing and setting forth any agreements reached by the parties. The order must include the scheduled date for any hearing that remains to be held, and address any other matters as appropriate.

§2.1405 Hearing.

(a) No later than twenty (20) days after the conclusion of the prehearing conference, the presiding officer shall hold a hearing on any contention that remains in dispute. At the beginning of the hearing, the presiding officer shall enter into the record all agreements reached by the parties before the hearing.

(b) A hearing will be recorded stenographically or by other means, under the supervision of the presiding officer. A transcript will be prepared from the recording that will be the sole official transcript of the hearing. The transcript will be prepared by an official reporter who may be designated by the Commission or may be a regular employee of the Commission. Except as limited by section 181 of the Act or order of the Commission, the transcript will be available for inspection in the agency's public records system. Copies of transcripts are available to the parties and to the public from the official reporter on payment of the charges fixed therefor. If a hearing is recorded on videotape or other video medium, copies of the recording of each daily session of the hearing may be made available to the parties and to the public from the presiding officer upon payment of a charge fixed by the Chief Administrative Judge. Parties may purchase copies of the transcript from the reporter.

(c) Hearings will be open to the public, unless portions of the hearings involving proprietary or other protectable information are closed in accordance with the Commission's regulations.

(d) At the hearing, the presiding officer will not receive oral evidence that is irrelevant, immaterial, unreliable or unduly repetitious. Testimony will be under oath or affirmation.

(e) The presiding officer may question witnesses who testify at the hearing, but the parties may not do so.

10 CFR Ch. I (1-1-07 Edition)

(f) Each party may present oral argument and a final statement of position at the close of the hearing. Written post-hearing briefs and proposed findings are not permitted unless ordered by the presiding officer.

§2.1406 Initial decision—issuance and effectiveness.

(a) Where practicable, the presiding officer will render a decision from the bench. In rendering a decision from the bench, the presiding officer shall state the issues in the proceeding and make clear its findings of fact and conclusions of law on each issue. The presiding officer's decision and order must be reduced to writing and transmitted to the parties as soon as practicable, but not later than twenty (20) days, after the hearing ends. If a decision is not rendered from the bench, a written decision and order will be issued not later than thirty (30) days after the hearing ends. Approval of the Chief Administrative Judge must be obtained for an extension of these time periods, and in no event may a written decision and order be issued later than sixty (60) days after the hearing ends without the express approval of the Commission.

(b) The presiding officer's written decision must be served on the parties and filed with the Commission when issued.

(c) The presiding officer's initial decision is effective and constitutes the final action of the Commission twenty (20) days after the date of issuance of the written decision unless any party appeals to the Commission in accordance with §2.1407 or the Commission takes review of the decision sua sponte or the regulations in this part specify other requirements with regard to the effectiveness of decisions on certain applications.

§2.1407 Appeal and Commission review of initial decision.

(a)(1) Within fifteen (15) days after service of a written initial decision, a party may file a written appeal seeking the Commission's review on the grounds specified in paragraph (b) of this section. Unless otherwise authorized by law, a party must file an appeal with the Commission before seeking judicial review.

Nuclear Regulatory Commission

§ 2.1502

(2) An appeal under this section may not be longer than twenty (20) pages and must contain the following:

(i) A concise statement of the specific rulings and decisions that are being appealed;

(ii) A concise statement (including record citations) where the matters of fact or law raised in the appeal were previously raised before the presiding officer and, if they were not, why they could not have been raised;

(iii) A concise statement why, in the appellant's view, the decision or action is erroneous; and

(iv) A concise statement why the Commission should review the decision or action, with particular reference to the grounds specified in paragraph (b) of this section.

(3) Any other party to the proceeding may, within fifteen (15) days after service of the appeal, file an answer supporting or opposing the appeal. The answer may not be longer than twenty (20) pages and should concisely address the matters specified in paragraph (a)(2) of this section. The appellant does not have a right to reply. Unless it directs additional filings or oral arguments, the Commission will decide the appeal on the basis of the filings permitted by this paragraph.

(b) In considering the appeal, the Commission will give due weight to the existence of a substantial question with respect to the following considerations:

(1) A finding of material fact is clearly erroneous or in conflict with a finding as to the same fact in a different proceeding;

(2) A necessary legal conclusion is without governing precedent or is a departure from, or contrary to, established law;

(3) A substantial and important question of law, policy or discretion has been raised by the appeal;

(4) The conduct of the proceeding involved a prejudicial procedural error; or

(5) Any other consideration which the Commission may deem to be in the public interest.

(c) Once a decision becomes final agency action, the Secretary shall transmit the decision to the NRC staff

for action in accordance with the decision.

Subpart O—Legislative Hearings

SOURCE: 69 FR 2273, Jan. 14, 2004, unless otherwise noted.

§ 2.1500 Purpose and scope.

The purpose of this subpart is to provide for simplified, legislative hearing procedures to be used, at the Commission's sole discretion, in:

(a) Any design certification rule-making hearings under subpart B of part 52 of this chapter that the Commission may choose to conduct; and

(b) Developing a record to assist the Commission in resolving, under § 2.335(d), a petition filed under § 2.335(b).

§ 2.1501 Definitions.

Demonstrative information means physical things, not constituting documentary information.

Documentary information means information, ordinarily contained in documents or electronic files, but may also include photographs and digital audio files.

§ 2.1502 Commission decision to hold legislative hearing.

(a) The Commission may, in its discretion, hold a legislative hearing in either a design certification rule-making under § 52.51(b) of this chapter, or a proceeding where a question has been certified to it under § 2.335(d).

(b) Notice of Commission decision—
(1) Hearing in design certification rulemakings. If, at the time a proposed design certification rule is published in the FEDERAL REGISTER under § 52.51(a) of this chapter, the Commission decides that a legislative hearing should be held, the information required by paragraph (c) of this section must be included in the FEDERAL REGISTER notice for the proposed design certification rule. If, following the submission of written public comments submitted on the proposed design certification rule which are submitted in accordance with § 52.51(a) of this chapter, the Commission decides to conduct a legislative hearing, the Commission shall publish a notice in the FEDERAL

§ 2.1503

REGISTER and on the NRC Web site indicating its determination to conduct a legislative hearing. The notice shall contain the information specified in paragraph (c) of this section, and specify whether the Commission or a presiding officer will conduct the legislative hearing.

(2) Hearings under § 2.335(d). If, following a certification of a question to the Commission by a Licensing Board under § 2.335(d), the Commission decides to hold a legislative hearing to assist it in resolving the certified question, the Commission shall issue an order containing the information required by paragraph (c) of this section. The Commission shall serve the order on all parties in the proceeding. In addition, if the Commission decides that persons and entities other than those identified in paragraph (c)(2) may request to participate in the legislative hearing, the Commission shall publish a notice of its determination to hold a legislative hearing in the FEDERAL REGISTER and on the NRC Web site. The notice shall contain the information specified in paragraph (c) of this section, and refer to the criteria in § 2.1504 which will be used in determining requests to participate in the legislative hearing.

(c) If the Commission decides to hold a legislative hearing, it shall, in accordance with paragraph (b) of this section:

(1) Identify with specificity the issues on which it wishes to compile a record;

(2) Identify, in a hearing associated with a question certified to the Commission under § 2.335(d), the parties and interested State(s), governmental bodies, and Federally-recognized Indian Tribe under § 2.315(c), who may participate in the legislative hearing;

(3) Identify persons and entities that may, in the discretion of the Commission, be invited to participate in the legislative hearing;

(4) Indicate whether other persons and entities may request, in accordance with § 2.1504, to participate in the legislative hearing, and the criteria that the Commission or presiding officer will use in determining whether to permit such participation;

(5) Indicate whether the Commission or a presiding officer will conduct the legislative hearing;

10 CFR Ch. I (1-1-07 Edition)

(6) Specify any special procedures to be used in the legislative hearing;

(7) Set the dates for submission of requests to participate in the legislative hearing, submission of written statements and demonstrative and documentary information, and commencement of the oral hearing; and

(8) Specify the location where the oral hearing is to be held. Ordinarily, oral hearings will be held in the Washington, DC metropolitan area.

§ 2.1503 Authority of presiding officer.

If the Commission appoints a presiding officer to conduct the legislative hearing, the presiding officer shall be responsible for expeditious development of a sufficient record on the Commission-identified issues, consistent with the direction provided by the Commission under § 2.1502(c). The presiding officer has the authority otherwise accorded to it under §§ 2.319(a), (c), (e), (g), (h), and (i), 2.324, and 2.333 to control the course of the proceeding, and may exercise any other authority granted to it by the Commission in accordance with § 2.1502(c)(6).

§ 2.1504 Request to participate in legislative hearing.

(a) Any person or entity who wishes to participate in a legislative hearing noticed under either § 2.1502(b)(1) or (b)(2) shall submit a request to participate by the date specified in the notice. The request must address:

(1) A summary of the person's position on the subject matter of the legislative hearing; and

(2) The specific information, expertise or experience that the person possesses with respect to the subject matter of the legislative hearing.

(b) The Commission or presiding officer shall, within ten (10) days of the date specified for submission of requests to participate, determine whether the person or entity has met the criteria specified by the Commission under § 2.1502(c)(4) for determining requests to participate in the legislative hearing, and issue an order to that person or entity informing them of the presiding officer's decision. A presiding officer's determinations in this regard are final and not subject to any motion for reconsideration or appeal to the

Nuclear Regulatory Commission

§ 2.1508

Commission; and the Commission's determination in this regard are final and are not subject to a motion for reconsideration.

§ 2.1505 Role of the NRC staff.

The NRC staff shall be available to answer any Commission or presiding officer's questions on staff-prepared documents, provide additional information or documentation that may be available to the staff, and provide other assistance that the Commission or presiding officer may request without requiring the NRC staff to assume the role of an advocate. The NRC staff may request to participate in the legislative hearing by providing notice to the Commission or presiding officer, as applicable, within the time period established for submitting a request to participate; or if no notice is provided under § 2.1502(b)(2), within ten (10) days of the Commission's order announcing its determination to conduct a legislative hearing.

§ 2.1506 Written statements and submission of information.

All participants shall file written statements on the Commission-identified issues, and may submit documentary and demonstrative information. Written statements, copies of documentary information, and a list and short description of any demonstrative information to be submitted must be received by the NRC (and in a hearing on issues stemming from a § 2.335(b) petition, by the parties in the proceeding in which the petition was filed) no later than ten (10) days before the commencement of the oral hearing.

§ 2.1507 Oral hearing.

(a) Not less than five (5) days before the commencement of the oral hearing, the presiding officer shall issue an order setting forth the grouping and order of appearance of the witnesses at the oral hearing. The order shall be filed upon all participants by email or facsimile transmission if possible, otherwise by overnight mail.

(b) The Commission or presiding officer may question witnesses. Neither the Commission nor the presiding officer will ordinarily permit participants to submit recommended questions for

the Commission or presiding officer to propound to witnesses. However, if the Commission or presiding officer believe that the conduct of the oral hearing will be expedited and that consideration of such proposed questions will assist in developing a more focused hearing record, the Commission or presiding officer may, in its discretion, permit the participants to submit recommended questions for the Commission or presiding officer's consideration.

(c) The Commission or presiding officer may request, or upon request of a participant may, in the presiding officer's discretion, permit the submission of additional information following the close of the oral hearing. Such information must be submitted no later than five (5) days after the close of the oral hearing and must be served at the same time upon all participants at the oral hearing.

§ 2.1508 Recommendation of presiding officer.

(a) If the Commission is not acting as a presiding officer, the presiding officer shall, within thirty (30) days following the close of the legislative hearing record, certify the record to the Commission on each of the issues identified by the Commission.

(b) The presiding officer's certification for each Commission-identified issue shall contain:

(1) A transcript of the oral phase of the legislative hearing;

(2) A list of all participants;

(3) A list of all witnesses at the oral hearing, and their affiliation with a participant;

(4) A list, and copies of, all documentary information submitted by the participants with ADAMS accession numbers;

(5) All demonstrative information submitted by the participants;

(6) Any written answers submitted by the NRC staff in response to questions posed by the presiding officer with ADAMS accession numbers;

(7) A certification that all documentary information has been entered into ADAMS, and have been placed on the NRC Web site unless otherwise protected from public disclosure;

§ 2.1509

(8) A certification by the presiding officer that the record contains sufficient information for the Commission to make a reasoned determination on the Commission-identified issue; and

(9) At the option of the presiding officer, a summary of the information in the record and a proposed resolution of the Commission-identified issue with a supporting basis.

§ 2.1509 Ex parte communications and separation of functions.

Section 2.347 applies in a legislative hearing. Section 2.348 applies in a legislative hearing only where the hearing addresses an issue certified to the Commission under § 2.335(d), and then only with respect to the underlying contested matter.

APPENDIX A TO PART 2 [RESERVED]

APPENDIX B TO 10 CFR PART 2—MODEL MILESTONES TO BE USED BY A PRESIDING OFFICER AS A GUIDELINE IN DEVELOPING A HEARING SCHEDULE FOR THE CONDUCT OF AN ADJUDICATORY PROCEEDING IN ACCORDANCE WITH 10 CFR 2.332.

I. MODEL MILESTONES FOR A HEARING ON AN ENFORCEMENT ACTION CONDUCTED UNDER 10 CFR PART 2, SUBPART G

These model milestones would apply to enforcement proceedings conducted under 10 CFR Part 2, Subpart G. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of the proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information would include, but not be limited to, the complexity of the issues, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues to be adjudicated in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and G.

The model milestones are based upon the following assumptions: (i) the issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The model milestones reflect electronic filing and service in ac-

10 CFR Ch. I (1–1–07 Edition)

cordance with 10 CFR 2.305. In some cases, preparation of direct testimony and motions for summary disposition can proceed once initial mandatory disclosures have been made. The time periods set forth in the model milestones reflect these assumptions.

MODEL MILESTONES

[10 CFR Part 2, Subpart G]

<ul style="list-style-type: none"> • Within 20 days of date of enforcement order: 	<p>Person subject to order files answer; if order immediately effective, motion to set aside immediate effectiveness due; requests for hearing due.</p>
<ul style="list-style-type: none"> • Within 100 days of enforcement order: 	<p>Presiding officer issues order on hearing request by person who is subject of enforcement order.</p>
<ul style="list-style-type: none"> • Within 25 days of presiding officer decision granting hearing: 	<p>Presiding officer sets initial schedule for the proceeding.</p>
<ul style="list-style-type: none"> • Within 145 days of presiding officer decision granting hearing: 	<p>Discovery complete.</p>
<ul style="list-style-type: none"> • Within 155 days of presiding officer decision granting hearing: 	<p>Motions for summary disposition due.</p>
<ul style="list-style-type: none"> • Within 235 days of presiding officer decision granting hearing: 	<p>Presiding officer decisions on motions for summary disposition.</p>
<ul style="list-style-type: none"> • Within 245 days of presiding officer decision granting hearing: 	<p>Prehearing conference (optional); presiding officer sets schedule for remainder of proceeding.</p>
<ul style="list-style-type: none"> • Within 275 days of presiding officer decision granting hearing: 	<p>Written testimony filed.</p>
<ul style="list-style-type: none"> • Within 90 days of end of evidentiary hearing and closing of record: 	<p>Presiding officer issues initial decision.</p>

II. MODEL MILESTONES FOR HEARINGS CONDUCTED UNDER 10 CFR PART 2, SUBPART L

These model milestones would apply to proceedings conducted under 10 CFR Part 2, Subpart L, including those on applications for combined licenses (COLs), renewed licenses, and license amendments. While such proceedings differ insofar as the scope and complexity of the NRC staff reviews for the requested actions may vary, such differences will be reflected in the staff's schedule for issuing its review documents in a particular type of action. Because the milestones are keyed to the staff's review schedule, separate milestones are not identified for proceedings on the different types of actions.

As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (*e.g.*, for filings) based upon all relevant information. Such information would include, but not be limited to, the number of contentions admitted, the complexity of the issues, the

NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and L.

The model milestones include only the most significant events in the proceeding and are based upon the following assumptions: (I) the issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) an oral hearing under 10 CFR 2.1207 will be held rather than a written hearing under 10 CFR 2.1208; and (iii) the final Safety Evaluation Report (SER) and final environmental document will be issued simultaneously. The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

MODEL MILESTONES
[10 CFR Part 2, Subpart L]

<ul style="list-style-type: none"> • Within 140 of publication days of notice in FEDERAL REGISTER: • Within 55 days of presiding officer decision granting intervention and admitting contentions: • Within 30 days of issuance of SER and any necessary NEPA document: • Within 85 days of issuance of SER and NEPA document: • Within 14 days after presiding officer decision on amended/late-filed contentions: • Within 115 days of issuance of SER and NEPA document: • Within 155 days of issuance of SER and NEPA document: • Within 175 days of issuance of SER and NEPA document: • Within 90 days of end of evidentiary hearing and closing of record: 	<p>Presiding officer decision on intervention petitions and admission of contentions.</p> <p>Presiding officer to set initial schedule for proceeding, based on staff schedule for issuing draft and final SERs and any necessary NEPA document.</p> <p>Proposed late-filed contentions on SER and necessary NEPA documents filed; motions for summary disposition on previously admitted contentions due.</p> <p>Presiding officer decision on admission of proposed late-filed contentions and motions for summary disposition; presiding officer sets schedule for remainder of proceeding.</p> <p>All parties complete updates of mandatory disclosures.</p> <p>Motions for summary disposition due.</p> <p>Written direct testimony filed.</p> <p>Evidentiary hearing begins.</p> <p>Presiding officer issues initial decision.</p>
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III. MODEL MILESTONES FOR A HEARING ON A TRANSFER OF A LICENSE CONDUCTED UNDER 10 CFR PART 2, SUBPART M

These model milestones would apply to proceedings conducted under 10 CFR Part 2, Subpart M on applications for license transfer. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (e.g., for filings) based upon all relevant information. Such information would include, but not be limited to, the number of contentions admitted, the complexity of the issues, the NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C and M.

The model milestones include only the most significant events in the proceeding, and are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) the parties do not file a joint request under 10 CFR 2.1308 for a hearing consisting of written comments; (iii) the final Safety Evaluation Report (SER) is not necessary to resolve the issues to be litigated; (iv) the Commission itself does not serve as the presiding officer; and (v) the Commission does not order further taking of testimony after the presiding officer certifies the record to the Commission under 10 CFR 2.1319(f). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

MODEL MILESTONES
[10 CFR Part 2, Subpart M]

<ul style="list-style-type: none"> • Within 100 days of publication of FEDERAL REGISTER notice of opportunity for hearing: • Within 30 days of order granting hearing petitions: • Within 12 days of completion of mandatory disclosures: • Within 45 days of scheduling order: 	<p>Presiding officer decision on intervention petitions and admission of contentions.</p> <p>NRC staff and other parties complete mandatory disclosures.</p> <p>Presiding Officer issues scheduling order to address, inter alia, scheduling of oral hearing, filing of written statements of position, direct testimony, and rebuttal testimony.</p> <p>Oral hearing commences.</p>
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MODEL MILESTONES—Continued
[10 CFR Part 2, Subpart M]

• Within 25 days after hearing ends:	Presiding officer certifies hearing record to the Commission.
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IV. MODEL MILESTONES FOR A HEARING ON AN ENFORCEMENT ACTION CONDUCTED UNDER 10 CFR PART 2, SUBPART N

These model milestones would apply to enforcement proceedings conducted under 10 CFR Part 2, Subpart N. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules based upon all relevant information. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and N.

The model milestones are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305. The only discovery provided is the mandatory disclosure made by each party pursuant to 10 CFR 2.336.

MODEL MILESTONES
[10 CFR Part 2, Subpart N]

• Within 20 of date of enforcement order:	Person subject to order files answer; if order immediately effective, motion to set aside immediate effectiveness due; requests for hearing due, including joint motion to use Subpart N procedures.
• Within 50 days of date of enforcement order:	Presiding officer decision on requests for hearing and confirms use of Subpart N procedures (note: if presiding officer concludes that Subpart N procedures should not be used, the Model Milestone for Enforcement Actions under Subpart G are applicable).
• Within 30 days of presiding officer decision granting hearing:	Mandatory disclosures complete.
• Within 40 days of presiding officer decision granting hearing:	Prehearing conference to specify issues for hearing and set schedules for remaining course of proceeding.
• Within 60 days of presiding officer decision granting hearing:	Evidentiary hearing begins.
• Within 30 days of end of evidentiary hearing and closing of record:	Presiding officer issues initial decision.

[70 FR 20462, Apr. 20, 2005]

APPENDIX C TO PART 2 [RESERVED]

APPENDIX D TO PART 2—SCHEDULE FOR THE PROCEEDING ON CONSIDERATION OF CONSTRUCTION AUTHORIZATION FOR A HIGH-LEVEL WASTE GEOLOGIC REPOSITORY.

Day	Regulation (10 CFR)	Action
0	2.101(f)(8), 2.105(a)(5).	Federal Register Notice of Hearing.
30	2.309(b)(2)	Petition to intervene/request for hearing, w/contentions.
30	2.309(b)(2)	Petition for status as interested government participant.
55	2.315(c)	Answers to intervention & interested government participant Petitions.
62	2.309(h)(1)	Petitioner's response to answers.
70	2.1021	First Prehearing conference.
100	2.309(h)(2)	First Prehearing Conference Order identifying participants in proceeding, admitted contentions, and setting discovery and other schedules.
110	2.1021	Appeals from First Prehearing Conference Order.
120	.....	Briefs in opposition to appeals.
150	2.1021, 2.329	Commission ruling on appeals for First Prehearing Conference Order.
548	.....	NRC Staff issues SER.
578	2.1022	Second Prehearing Conference.
608	2.1021, 2.1022	Discovery complete; Second Prehearing Conference Order finalizes issues for hearing and sets schedule for prefiled testimony and hearing.
618	2.1015(b)	Appeals from Second Prehearing Conference Order.
628	2.1015(b), c.f. 2.710(a).	Briefs in opposition to appeals; last date for filing motions for summary disposition.
648	c.f. 2.710(a)	Last date for responses to summary disposition motions.
658	2.710(a)	Commission ruling on appeals from Second Prehearing Conference Order; last date for party opposing summary disposition motion to file response to new facts and arguments in any response supporting summary disposition motion.
698	2.1015(b)	Decision on summary disposition motions (may be determination to dismiss or to hold in abeyance).
720	c.f. 2.710(a)	Evidentiary hearing begins.
810	.....	Evidentiary hearing ends.
840	2.712(a)(1)	Applicant's proposed findings.
850	2.712(a)(2)	Other parties' proposed findings.
855	2.712(a)(3)	Applicant's reply to other parties' proposed findings.
955	2.713	Initial decision.
965	2.342(a), 2.345(a), 2.1015(c)(1).	Stay motion. Petition for reconsideration, notice of appeal.
975	2.342(d), 2.345(b).	Other parties' responses to stay motion and Petitions for reconsideration.
985	.....	Commission ruling on stay motion.
995	2.1015(c)(2)	Appellant's briefs.
1015	2.1015(c)(3)	Appellee's briefs.

Nuclear Regulatory Commission

Pt. 4

Day	Regulation (10 CFR)	Action
1055	2.1023 Supp. Info.	Completion of NMSS and Commission supervisory review; issuance of construction authorization; NWPA 3-year period tolled.
1125	.....	Commission decision.

[69 FR 2275, Jan. 14, 2004; 69 FR 25997, May 11, 2004]

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

GENERAL PROVISIONS

- Sec.
- 4.1 Purpose and scope.
- 4.2 Subparts.
- 4.3 Application of this part.
- 4.4 Definitions.
- 4.5 Communications and reports.
- 4.6 Maintenance of records.
- 4.8 Information collection requirements: OMB approval.

Subpart A—Regulations Implementing Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974

DISCRIMINATION PROHIBITED

- 4.11 General prohibition.
- 4.12 Specific discriminatory actions prohibited.
- 4.13 Employment practices.
- 4.14 Medical emergencies.

ASSURANCES REQUIRED

- 4.21 General requirements.
- 4.22 Continuing Federal financial assistance.
- 4.24 Assurances from institutions.

COMPLIANCE INFORMATION

- 4.31 Cooperation and assistance.
- 4.32 Compliance reports.
- 4.33 Access to sources of information.
- 4.34 Information to beneficiaries and participants.

CONDUCT OF INVESTIGATIONS

- 4.41 Periodic compliance reviews.
- 4.42 Complaints.
- 4.43 Investigations.
- 4.44 Resolution of matters.
- 4.45 Intimidatory or retaliatory acts prohibited.

MEANS OF EFFECTING COMPLIANCE

- 4.46 Means available.
- 4.47 Noncompliance with §4.21.
- 4.48 Termination of or refusal to grant or to continue Federal financial assistance.
- 4.49 Other means authorized by law.

OPPORTUNITY FOR HEARING

- 4.51 Notice of opportunity for hearing.

HEARINGS AND FINDINGS

- 4.61 Presiding officer.
- 4.62 Right to counsel.
- 4.63 Procedures, evidence, and record.
- 4.64 Consolidated or joint hearings.

DECISIONS AND NOTICES

- 4.71 Initial decision or certification.
- 4.72 Exceptions and final decision.
- 4.73 Rulings required.
- 4.74 Content of orders.
- 4.75 Post termination proceedings.

JUDICIAL REVIEW

- 4.81 Judicial review.

EFFECT ON OTHER REGULATIONS; FORMS AND INSTRUCTIONS

- 4.91 Effect on other regulations.
- 4.92 Forms and instructions.
- 4.93 Supervision and coordination.

Subpart B—Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as Amended

- 4.101 Definitions.

DISCRIMINATORY PRACTICES

- 4.121 General prohibitions against discrimination.
- 4.122 General prohibitions against employment discrimination.
- 4.123 Reasonable accommodation.
- 4.124 Employment criteria.
- 4.125 Preemployment inquiries.
- 4.126 General requirement concerning accessibility.
- 4.127 Existing facilities.
- 4.128 New construction.

ENFORCEMENT

- 4.231 Responsibility of applicants and recipients.
- 4.232 Notice.
- 4.233 Enforcement procedures.

Subpart C—Regulations Implementing the Age Discrimination Act of 1975, as Amended

GENERAL

- 4.301 Purpose and scope.
- 4.302 Application of this subpart.