NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 50, 51, 52, 54, 60, 70, 73, 75, 76, and 110

RIN 3150–AG49

Changes to Adjudicatory Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning its rules of practice to make the NRC's hearing process more effective and efficient. The proposed rule would fashion hearing procedures that are tailored to the differing types of licensing and regulatory activities the NRC conducts and would better focus the limited resources of involved parties and the NRC.

DATES: Comments on the proposed rule must be received on or before July 16, 2001. Comments received after this date will be considered if it is practical to do so. However, the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Hand delivered comments should also be addressed to the Secretary, U.S. Nuclear Regulatory Commission, and delivered to: 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website *(http://ruleforum.llnl).* This site also provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@nrc.gov.*

Certain documents relating to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, MD. The same documents may also be viewed and downloaded electronically via the rulemaking website, *http://ruleforum.llnl.gov.* Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1639, e-mail *GSM@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Among the very first actions taken by the Nuclear Regulatory Commission following its creation in 1975, was an affirmation of the fundamental importance it attributes to public participation in the Commission's adjudicatory process. Public participation, the Commission said, ''is a vital ingredient to the open and full consideration of licensing issues and in establishing public confidence in the sound discharge of the important duties which have been entrusted to us.'' Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), CLI–75–1, 1 NRC 1, 2 (1975). However, the form and formality of the processes provided for public participation have long been debated, well before the NRC was established and well after the foregoing statement was made.

The Commission has taken a number of steps in recent years to reassess its processes to identify ways in which it can conduct its regulatory activities more effectively. This assessment has extended across the full range of the NRC's programs, from its oversight and inspection program to evaluate and assess licensee performance, to its internal program management activities. One of the cornerstones of the NRC's regulatory approach has always been ensuring that its review processes and decisionmaking are open, understandable, and accessible to all interested parties. Its processes for achieving this goal have been part of the reassessment as well. Recently, steps have been taken to expand the opportunities for stakeholder awareness and involvement in NRC policy and decisionmaking through greater use of public workshops in rulemaking, inviting stakeholder participation in Commission meetings, and more extensive use of public meetings with interested parties on a variety of safety and regulatory matters.

The Commission has had a longstanding concern that the hearing process associated with licensing and enforcement actions taken by the NRC is not as effective as it could be. Beginning with case-by-case actions in 1983, and with a final rule in 1989, the Commission took steps to move away from the trial-type, adversarial format to resolve technical disputes with respect to its materials license applications. Commission experience suggested that in most instances, the use of formal adjudicatory procedures is not essential to the development of an adequate hearing record; yet all too frequently their use resulted in protracted, costly proceedings. These less formal procedures sought to reduce the burden of litigation costs on applicants and other participants because of the informal nature of the hearing and to enhance the role of the presiding officer as a technical fact finder by giving him or her the primary responsibility for controlling the development of the hearing record beyond the initial submissions of the parties. A significant portion of the NRC's proceedings in the past ten years has been conducted under these informal procedures. Although the Commission's experience to date indicates that some of the original objectives have been achieved, there have also been some aspects of the informal procedures that have continued to prolong the proceeding

without truly enhancing the decisionmaking process. Given this experience, and with the potential for new proceedings in the next few years to consider applications for new facilities, to renew reactor operating licenses, to reflect restructuring in the electric utility industry, and to license waste storage facilities, the Commission concluded it needs to reassess its hearing process to identify improvements that will result in a better use of all participants' limited resources. To that end, the Commission recently initiated several actions related to its hearing processes—development of a Policy Statement on the hearing process, and a reexamination of the NRC's hearing process and requirements under the Atomic Energy Act as a foundation for possible rule changes.

A. Policy Statement

The Commission recently adopted a new Policy Statement that provides specific guidance for Licensing Boards and presiding officers on methods to use, when appropriate, for improving the management and timely completion of proceedings. Statement of Policy on the Conduct of Adjudicatory Proceedings, CLI–98–12, 48 NRC 18 (63 FR 41872; August 5, 1998). The Policy Statement is an extension of the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI–81–8, 13 NRC 452, 46 FR 28533 (May 21, 1981), which provided guidance to the Atomic Safety and Licensing Boards (Boards) on methods to improve the timely conduct of licensing proceedings and ensure that hearings are fair and produce adequate records that support decisions made by the NRC.

Among other things, the new Policy Statement urges presiding officers/boards to establish schedules for deciding issues before them. It also reminds presiding officers/boards of their authority to set schedules, resolve discovery disputes, and to take other action required to regulate the course of the proceedings. Case management by the presiding officers/boards is an essential element of a fair, efficient hearing process. The Policy Statement also provides that the Commission may set milestones for an individual proceeding. If a presiding officer/licensing board determines that it would miss any milestone ordered by the Commission by more than 30 days, it is to provide the Commission with a written explanation of the reasons for the delay.

The Policy Statement also sets forth the Commission's expectations of the parties in the proceeding. Parties are expected to adhere to the time frames set forth by the presiding officers/boards. Petitioners are reminded, among other things, of their burden to set forth contentions that meet the standards of 10 CFR 2.714(b)(2), and that contentions are limited by the nature of the application and the regulations. This guidance is directed to management and control of adjudicatory proceedings under the existing Rules of Practice. The guidance did not address more basic changes to the hearing process itself.

B. Reexamination of NRC's Hearing Process

In late 1998, the NRC Office of the General Counsel (OGC) undertook a reexamination of the NRC's current adjudicatory practices as conducted under the Atomic Energy Act of 1954, as amended, and the NRC's current regulations, as well as a review of the Administrative Procedure Act (APA) and the practices of other agencies and the federal courts, with a view to developing options for improving the NRC's hearing processes. This effort was documented in a Commission paper, SECY–99–006, January 8, 1999, that was made publicly available.

As part of the analysis of possible approaches, OGC reached the conclusion that except for a very limited set of hearings—those associated with the licensing of uranium enrichment facilities—the Atomic Energy Act did not mandate the use of a ''formal on-the-record'' hearing within the meaning of the APA, 5 U.S.C. 554, 556, and 557, and that the Commission enjoyed substantial latitude in devising suitable hearing processes that would accommodate the due process rights of participants. The key statutory provision, Section 189.a. of the Atomic Energy Act, declares only that ''a hearing'' (or an opportunity for a hearing) is required for certain types of agency actions. It does not state that such hearings are to be on-the-record proceedings. A detailed discussion of Section 189 and its legislative history can be found in the Commission's decision in Kerr McGee Corporation (West Chicago Rare Earths Facility), CLI–82–2, 15 NRC 232 (1982); see also Advanced Medical Systems, ALAB–929, 31 NRC 271, 279–288 (1990).

As a legal matter, where Congress provides for ''a hearing,'' and does not specify that the adjudicatory hearings are to be ''on-the-record,'' or conducted as an adjudication under 5 U.S.C. 554, 556 and 557 of the APA, it is presumed that informal hearings are sufficient. *United States* v. *Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 757 (1972), citing *Siegel* v. *AEC*, 400 F.2d 778, 785 (D.C.Cir. 1968); *United States* v. *Florida East Coast Ry.*, 410 U.S. 224 (1973). In contrast to informal hearings for which agencies have greater flexibility in shaping adjudicatory procedures, ''on-the-record'' hearings under the APA generally resemble adversarial trial-type proceedings with live presentation of witnesses and cross-examination. The Atomic Energy Commission (AEC) of the 1950s asserted that formal hearings were what Congress had intended. At that time, the AEC saw benefits in a highly formal process, resembling a judicial trial, for deciding applications to construct and operate nuclear power plants. It was thought that the panoply of features attending a trial—parties, sworn testimony, and cross-examination—would lead to a more complete resolution of the complex issues affecting the public health and safety and would build public confidence in the AEC's decisions and thus in the safety of nuclear power plants licensed by the AEC. One study concluded that the use of formal hearings developed in order to address concerns that the pressures of promotion by the AEC could have an undue influence on the AEC's assessment of safety issues. By use of an expanded hearing process, the Commission could more fully defend the objectivity of its licensing actions. See William H. Berman and Lee M. Hydeman, The Atomic Energy Commission and Regulating Nuclear Facilities (1961), reprinted in Improving the AEC Regulatory Process, Joint Committee on Atomic Energy, 87th Cong., 1st Sess., Vol. II, at 488 (1961).

The AEC thus took the official position that on-the-record hearings were not merely permissible under the Atomic Energy Act but required. AEC Regulatory Problems: Hearings before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2nd Sess. 60 (1962) (Letter of AEC Commissioner Loren K. Olsen). At least two subsequent statutes contain implications—though no more than that—that the Congresses that enacted them believed that formal adjudication was required. These instances, both of which involve clauses beginning with the word ''notwithstanding,'' are worth examining in some detail because they form much of the basis for arguments that the 1954 Act should be read to require on-the-record proceedings.

The first came in 1962, when Congress amended the Atomic Energy Act to add a new Section 191, authorizing the use of three-member licensing boards rather than hearing examiners, ''notwithstanding'' certain provisions of the APA. Because those referenced APA provisions dealt with

formal, on-the-record adjudication, the ''notwithstanding'' clause in the statute could be read (and by some, is read) to imply that, by 1962, Congress viewed the Atomic Energy Act as requiring on-the-record adjudication. (The crux of the argument is that the ''notwithstanding'' clause would have been unnecessary if on-the-record adjudication were not mandatory.) However, that very year, as will be discussed below, the Joint Committee on Atomic Energy restated its belief that formal adjudication was not required in AEC proceedings.

In 1978, ''notwithstanding'' made its second appearance, but this time, it was the Atomic Energy Act, rather than the Administrative Procedure Act, that presented the problem. In that year, Congress enacted the Nuclear Non-Proliferation Act (NNPA), which provided among other things for the NRC to establish procedures for ''such public hearings (on nuclear export licenses) as the Commission deems appropriate.'' NNPA Sec. 304, 42 U.S.C. 2155a(a). The statute said that this provision was the exclusive legal basis for any hearings on nuclear export licenses, adding: ''(N)otwithstanding section 189a. of the 1954 Act, (this) shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.'' 42 U.S.C. 2155a(b). The inference can therefore be drawn that by 1978, Congress thought that without express statutory authorization to use other hearing procedures, on-the-record formal hearings would be called for by Section 189 of the Atomic Energy Act.

As a legal matter, the amount of weight given to retrospective legislative history—that is, one Congress's opinion of what an earlier Congress intended—depends greatly on the circumstances. While the Supreme Court recently reiterated that ''(s)ubsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction,'' *Loving* v. *United States,* 517 U.S. 748, 770 (1996), the cases cited in that decision make clear that subsequent legislative history that falls short of explicitly ''declaring the intent of an earlier statute,'' and instead gives rise merely to certain inferences, is entitled to far less weight. *In Loving,* the Court cited a 1979 case, *Consumer Product Safety Commission* v. *GTE Sylvania,* 447 U.S. 102, 117. There, the Court began its discussion of the issue of ''subsequent legislative history'' with ''the oft-repeated warning that ''the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.''' The more formal and explicit is Congress's statement of what it intended in its previous enactment, the more weight it will be accorded. Where Congress has passed legislation, which an agency has interpreted in a particular (and controversial) way, and Congress then enacts a second statute confirming that the agency's interpretation was consistent with what it had intended all along, then Congress can truly be said to have ''declared the intent of an earlier statute,'' and that kind of ''subsequent legislative history'' will indeed be given great weight by a reviewing court. This was the case, for instance, with the FCC's ''fairness doctrine,'' upheld by the Supreme Court in *Red Lion Broadcasting Co.* v. *FCC,* 395 U.S. 367 (1969). There, the Court said, Congress had not just kept its silence about the agency's interpretation but had ''ratified it with positive legislation.'' 395 U.S. 367, 381–82.

Where subsequent legislative history is less formal and explicit, the Supreme Court has made clear that it becomes perilous to rely on it: ''[A]s time passes memories fade and a person's perception of his earlier intention may change. Thus, even when it would otherwise be useful, subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment.'' *GTE Sylvania,* 447 U.S. at 118 n.13. In *Oscar Mayer* & Co. v. *Evans,* 441 U.S. 750, 751 (1979), the Court brushed aside a conference committee report that, in dealing with amendments to a statute, offered its view of the proper interpretation of the original statute. The Court said the report was written 11 years after the original statute and thus was ''in no sense part of the legislative history * * *. It is the intent of the Congress that enacted (the section) that controls.'' (Citations omitted.) Likewise, in *Teamsters* v. *United States,* 431 U.S. 324, 354 n. 39 (1977), the Court stated that ''little if any weight'' should be given to a conference committee report, written eight years after the original statute, that purported to interpret that earlier statute.

Applying the law to this matter, we see nothing in these two ''notwithstanding'' clauses that even approaches being a clear declaration of what section 189a of the 1954 Act provided. The most that can be said for the later statutes is that they give rise to possible inferences as to what the later Congresses—not the Congress that passed the 1954 Atomic Energy Act—may have believed. But even those inferences are far from unequivocal.

The most plausible explanation for the ''notwithstanding'' clauses, in the Commission's view, is that they were intended not as a means to overcome what were viewed as fatal legal impediments, but rather, as a precaution, like many such legislative clauses, to anticipate potential legal objections and eliminate them. In view of the way that the law was then being applied by the AEC, it would have been only prudent of the drafters to eliminate ambiguity on this point when enacting additional provisions, even if they had been convinced that the clauses were unnecessary. At this point, there is no good way to know whether they regarded these clauses as necessary or not, but we doubt that a reviewing court would care greatly one way or the other. To focus too much on Congress's thought processes in 1962, when it enacted section 191, and in 1978, when it passed the Nuclear Non-Proliferation Act, runs the risk of losing sight of what any reviewing court interested in legislative intent would regard as the central question, which is what Congress intended in 1954, when it enacted Section 189a.

For many years, the NRC did not depart from the longstanding assumption that the Atomic Energy Act requires on-the-record hearings despite the fact that this assumption had never been reduced to a definitive holding.

Also consistent with its understanding of Section 189a, in 1978 the NRC declared that the hearing it would hold on an application to construct and operate a nuclear waste repository for high-level waste would be formal. In a final rule (46 FR 13971; February 25, 1981) now codified at 10 CFR part 2, subpart J, the Commission provided for a mandatory formal hearing at the construction authorization stage and for an opportunity for a formal hearing before authorizing receipt and possession of high level waste at a geologic repository. Subsequently, Congress enacted the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101 *et seq.* That law includes no specific hearing requirements. Instead, it seems to contemplate, at Section 114, that the NRC will apply existing laws applicable to the construction and operation of nuclear facilities. In sum, there is no statutory requirement for a formal hearing on a high level waste repository, but without a rule change, the NRC's regulations would require a formal hearing. In 1990, Congress also provided that for the licensing of a uranium enrichment facility, the NRC ''shall conduct a single adjudicatory hearing on the record.'' [1] This provision can be interpreted in one of two ways: either as one more

[1] Atomic Energy Act of 1954, as amended, section 193, 42 U.S.C. 2243.

reflection of Congress's understanding that formal adjudication was the norm in NRC facility licensing proceedings, or as the very opposite, i.e., as showing that Congress understood that because of the presumption against formal hearings, explicit statutory language would be needed to make proceedings for this type of facility ''on the record,'' as that term is used in the Administrative Procedure Act.

However, the view that formal adjudications were desirable and mandatory was not unanimously held. As early as 1962, a Senate subcommittee wrote, in words that might easily have been written today:

> By now, it has become apparent that the adverse type of proceeding, resembling as it does the processes of the courts, does not lend itself to the proper, efficient, or speedy determination of issues with which the administrative agencies frequently must deal * * *. Questions relating to * * * licensing of atomic reactors * * * might better be solved in some type of proceeding other than an administrative ''lawsuit'' among numerous parties.[2]

This report was cited with approval by the Joint Committee on Atomic Energy, which turned down a proposal recommended by its consultants, to provide explicit statutory authorization for the AEC to use informal procedures. The Joint Committee reasoned that such legislation was unnecessary, given that the Commission already had ''legal latitude * * * to follow such procedures,'' that such procedures were desirable, and that the Committee had strongly encouraged the Commission to make use of them. Despite the Joint Committee's urgings, the AEC made no move in the direction of deformalization.

This interchange between Congress and the AEC over the nature of the hearing requirement of section 189 took place again in 1972, as Congress amended the AEA by adding a new section 192, to provide for the issuance of a temporary operating license during the pendency of an operating license hearing. This amendment, Public Law 92–307, 86 Stat. 191, explicitly provided that ''The hearing required by this section and the decision of the Commission on the petition shall be conducted with expedited procedures as the Commission may by rule, regulation, or order deem appropriate for a full disclosure of material facts on all substantial issues raised in connection with the proposed temporary operating license.'' The legislative history of this provision is replete with reminders to the Commission that the procedures to be established for these actions are not to be trial-type procedures used in connection with the issuance of the final operating license, as well as that in a broader context, the Commission was not compelled to conduct formal, on-the-record proceedings. In keeping with the new section 192, the Commission fashioned expedited procedures in subpart F to 10 CFR part 2 (1973), providing for an informal proceeding not dramatically different in substance from the current provisions found in subpart L to 10 CFR part 2. Section 192 expired by its own terms in 1973, but was renewed, in revised form in 1983, as part of the NRC's authorization legislation for FY 1982–1983. Public Law 97–415, 96 Stat. 2067. The 1983 legislation stated that the provisions of Section 189a. would not apply to such licensing actions, which were to be completed ''as promptly as practicable.'' See Public Law 97–415, sec. 11. The Commission's implementing regulations were set forth in subpart C (48 FR 46497, October 13, 1983). 10 CFR 2.308 expressly provided that for these temporary operating licenses formal adjudicatory procedures would not be used and that case-by-case procedures would be developed to deal with issues as they arose. As with its predecessor provision, the 1983 provision for the issuance of the temporary operating licenses expired by its own terms, in 1983.

Over the decades since the Atomic Energy Act was passed, debate over the value of on-the-record adjudication for the resolution of nuclear licensing issues, and indeed for resolving scientific issues generally, has only increased. There are now many observers who are skeptical that the use of formal adjudication in NRC licensing cases is the appropriate means to settle a regulatory issue; that whatever validity there may have been to the arguments for formal adjudication from the 1950s to the 1970s, they no longer have merit; and that less formalized proceedings could mean not only greater efficiency, but also better decisions, with more meaningful public participation and greater public acceptance of the result. See, e.g., Improving Regulation of Safety at DOE Nuclear Facilities, Final Report of the Advisory Committee on External Regulation of DOE Nuclear Safety, December 1995, at 39.

However, because of the early interpretation that formal hearings were required, as well as the NRC's long-standing practice of conducting formal hearings on reactor licensing actions, each time that the NRC has explored ways of deformalizing its proceedings, it has had to confront its own prior statements and actions on the subject. Even so, no court has rendered a definitive holding on the application of the APA's ''on-the-record'' hearing requirements to Atomic Energy Act proceedings. Indeed, while some court decisions reflected the agency's early assumption that ''on-the-record'' hearings were required, other decisions did not. Compare *Union of Concerned Scientists* v. *NRC,* 735 F.2d 1437, 1444 n. 12 (D.C. Cir. 1984), cert. denied, 469 U.S. 1132 (1984) (U.C.S. I.) (''there is much to suggest that the Administrative Procedure Act's (APA) ''on the record'' procedures * * * apply (to section 189)'') with *Union of Concerned Scientists* v. *NRC,* 920 F.2d 50, 53 n. 3 (D.C. Cir. 1990) (''it is an open question whether section 189(a)—which mandates only that a 'hearing' be held and does not provide that that hearing be held 'on the record'—nonetheless requires the NRC to employ in a licensing hearing procedures designated by the (APA) for formal adjudications''). The commentary in these and other cases is essentially dicta—observations not essential to the court's decision. See also *Siegel* v. *AEC,* 400 F.2d 778, 785 (D.C. Cir. 1968) (deciding only permissibility of informal rulemaking procedures under section 189); Porter County Chapter of the *Izaak Walton League* v. *NRC,* 606 F.2d 1363, 1368 (D.C. Cir. 1979) (deciding only NRC's discretion to initiate enforcement proceedings subject to section 189 hearing); *City of West Chicago* v. *NRC,* 701 F.2d 632, 642 (7th Cir. 1983) (deciding only permissibility of informal procedures in materials licensing adjudication).

In *Chemical Waste Management* v. *EPA,* 873 F.2d 1477, 1480 (D.C. Cir. 1989), the D.C. Circuit stated that while the presence of the words ''on the record'' are not absolutely essential in order to find that formal adjudicatory hearings are required, there must be, in the absence of those words or similar language, evidence of ''exceptional circumstances'' demonstrating that Congress intended to require the use of formal adjudicatory procedures. Although the court suggested, again in dicta, that section 189a of the Atomic Energy Act might be a case where ''exceptional circumstances'' dictate formal, on-the-record hearing requirements, that observation has its roots in a dictum in U.C.S. I which suggests that in 1961 ''the AEC specifically requested Congress to relieve it of its burden of ''on the

[2] H.R. Rep. No. 1966, 87th Cong., 2d Sess. 6 (1962), quoted in Kerr McGee Corp., CLI–82–2, 15 NRC 232,251 (1982)(Attachment 1).

record'' adjudications under section 189(a)'' and Congress did not do so. 735 F.2d at 1444 n. 12. The opposite is more nearly correct: The AEC argued in favor of formal procedures and the Joint Committee on Atomic Energy advised that informal procedures were permissible. See H.R. Rep. No. 1966, 87th Cong., 2d Sess., at 6 (1962), quoted in Kerr McGee Corp., CLI–82–2, 15 NRC 232, 251 (1982). More recently, in *Kelley* v. *Selin,* 42 F.3d 1501, 1511–12 (6th Cir.), cert. denied, 115 S.Ct. 2611 (1995), the court emphasized the NRC's latitude to determine the nature of the ''hearing'' mandated by the Atomic Energy Act.

The Commission's approach to deformalization has been cautious, taking place in slow, incremental steps. One such step came in 1982, when the Commission, in the West Chicago case, granted an informal hearing (i.e., with written submissions only) on an amendment to a materials license. In doing so, it observed that the Atomic Energy Act did not specifically require on-the-record hearings, and it called the legislative history ''unilluminating'' as to Congress's intent in materials licensing cases. The Commission noted that while it held formal hearings in all reactor licensing cases, it had not stated explicitly whether it did so as a matter of discretion or of statutory requirement. In any event, it did not view the Act as mandating an on-the-record hearing in every licensing case. This decision was upheld by a reviewing court. *City of West Chicago* v. *NRC,* 701 F.2d 632 (7th Cir. 1983). Subsequently, the NRC issued a new subpart L to part 2, setting forth procedures for holding informal proceedings on all materials license applications and amendments (54 FR 8276; February 28, 1989). In the Nuclear Waste Policy Act of 1982, sec. 134, 42 U.S.C. 10154, Congress specified a set of hybrid procedures for licensing expansions of spent fuel storage capacity at reactor sites. The process called for written submissions, oral argument, and an adjudicatory hearing only after specific findings by the Commission. The Commission promulgated procedures —10 CFR part 2, subpart K (50 FR 41670; October 15, 1985)—to implement this legislation.

The West Chicago court's finding that formal hearings were not required for materials licenses opened the door considerably wider for the argument that formal hearings are not necessarily required in reactor licensing cases. The provision of the Atomic Energy Act that establishes the basic statutory entitlement to a ''hearing'' does not distinguish between reactor licenses and materials licenses. The first significant move toward deformalization of reactor licensing cases came in 1989, when the NRC completed what a reviewing court described as a ''bold and creative'' effort to foster standardization of nuclear power plant designs, as well as the early resolution of key safety issues. This was the issuance of a new part 52, which provided for issuance of design certifications and ''combined licenses'' for construction and operation of nuclear power plants (54 FR 15386; April 18, 1989). The rule provided that standard designs could be approved by rulemaking, with an opportunity for an informal hearing conducted by an Atomic Safety and Licensing Board. (This would be a ''paper'' hearing, unless the Licensing Board requested the authority to conduct a ''live''—that is, oral—hearing, and the Commission agreed.) Subpart G formal hearings would be offered thereafter, before the issuance of the combined construction permit/operating license for a specific facility. When the facility was essentially complete and close to fuel loading and criticality, there would be an opportunity for members of the public to raise any concerns they might have about plant operation. These could fall into one of two categories: Either a claim that the facility as built did not meet the ''acceptance criteria'' specified in the original combined construction permit/operating license, or a claim that the acceptance criteria themselves (that is, the licensing requirements) were deficient. For claims in the former category, the Commission would determine whether to hold a hearing and whether it would be a formal or informal hearing. A request to modify the terms of a combined license would be handled as a request for action under 10 CFR 2.206.

Part 52 was promptly challenged after its promulgation. A panel of the U.S. Court of Appeals for the D.C. Circuit issued a decision that upheld some parts of the rule but set aside others, including the provisions governing the opportunities for a hearing after completion of construction and before operation. *Nuclear Information and Resource Service* v. *NRC,* 918 F.2d 189 (D.C. Cir. 1990), vacated & rehearing en banc granted, 928 F.2d 465 (D.C. Cir. 1991). However, the decision was later vacated by the entire D.C. Circuit, sitting en banc. *Nuclear Information and Resource Service* v. *NRC,* 969 F.2d 1169 (D.C. Cir. 1992). In its brief to the full court, the NRC argued unequivocally that the Atomic Energy Act's hearing requirement for nuclear power plant licensing did not necessarily mean a formal hearing.

The full court upheld part 52 in its entirety. However, on the question of whether hearings must be formal, it reserved judgment on the grounds that the NRC's argument that informal hearings were permissible had not been made in the rulemaking or before the original panel. 969 F.2d at 1180. Subsequently, Congress enacted legislation (Pub. L. 102–486 (1992), endorsing part 52 and specifying that at the pre-operation phase, any hearing on whether the appropriate inspections and tests have been made, and the prescribed acceptance criteria have been met, shall be either ''informal or formal adjudicatory,'' as the Commission may in its discretion determine.

The Commission has taken two more steps to further stake out its position that the Atomic Energy Act does not require formal hearings. The first was a rulemaking implementing the Equal Access to Justice Act (EAJA), 5 U.S.C. 504. This statute authorizes the recovery of attorney's fees by certain ''prevailing'' parties in ''adversary adjudications.'' The term ''adversary adjudication'' is defined in 5 U.S.C. 504(b)(1)(C) to generally mean, for purposes of the EAJA, adjudications conducted under 5 U.S.C. 554, the section of the Administrative Procedure Act applicable to adjudications required by statute to be determined on the record after the opportunity for an agency hearing. ''Adversary adjudications'' do not include adjudications to consider the grant or renewal of a license.

The NRC decided to authorize the payment of attorney's fees only for adjudications under the Program Fraud Civil Remedies Act, which by law must be on-the-record, on the grounds that no other NRC adjudications (other than those for the licensing of uranium enrichment facilities under Section 193) must by law be on-the-record. 10 CFR part 12 (59 FR 23121; May 5, 1994). To date, no lawsuit has been filed challenging this determination. The second and more significant step was the recent promulgation of subpart M to part 2 (63 FR 66730; Dec. 3, 1998), to cover transfers of licenses, including those for power reactors. Here again, the rule does not provide for formal proceedings.

In a Staff Requirements Memorandum issued on July 22, 1999 (which is available to the public), the Commission directed OGC to develop a proposed rulemaking. The Commission also indicated that it would pursue legislation to confirm NRC's discretion to structure its procedures as it deemed necessary to carry out its responsibilities. The Commission further directed that the views of external stakeholders be obtained. In response, on October 26–27, 1999, OGC

conducted a facilitated public meeting with stakeholders representing the industry, public interest groups, another Federal agency, academia, and the NRC's Atomic Safety and Licensing Board Panel. The transcribed views of all participants are publicly available. In addition to the broad issue of the degree of formality or informality of the hearing process, the issues addressed at this meeting encompassed matters such as requirements for standing, contentions, discovery, cross-examination, summary disposition, hearing schedules and time limits, the role of the presiding officer, and the number of different hearing ''tracks'' that might be appropriate, all having been raised directly or indirectly in SECY–99–006. The comments at this meeting are described below and have been considered in this rulemaking.

C. Comments on Policy Statement

The NRC has received a number of public comments on its recent Policy Statement on the conduct of adjudicatory proceedings (63 FR 41872; August 5, 1998). The NRC is taking this opportunity to address those comments as part of this proposed rulemaking.

Eleven sets of comments were received on the Policy Statement. Some of the comments came from persons who represented the views of several other named persons. Two of the sets of comments opposed the Policy Statement; the remaining nine generally supported the Policy Statement.

Comment. The Policy Statement and its suggestions for expedited proceedings that allow delays only in extreme and unavoidable circumstances is unfair, inconsistent with due process, violates the Administrative Procedure Act (APA), and emphasizes licensing over health and safety concerns. Expedited schedules are not necessary for nuclear power plant license renewal proceedings. Expedited schedules may not be reasonable for hearings with complex issues. An expedited hearing schedule is harmful to intervenor groups who need more time due to their lack of funding.

Response. The NRC is unaware of any judicial decision that holds that the type of hearing procedures being proposed in the Policy Statement guidance violates due process or the APA. In fact, the Policy Statement recognizes that there is a need to balance efforts to avoid delay with procedures that will ensure fair and reasonable time frames for taking action in the adjudication. The Commission believes that the guidance in the Policy Statement strikes a proper balance among all these considerations. The Commission also believes that providing more effective hearing processes will result in a better use of all participants' limited resources.

Comment. Contrary to statements made in the Policy Statement, licensing boards do not have total discretion to set schedules in proceedings. For example, licensing boards must allow contentions to be filed anytime up to 15 days before the prehearing conference, and a board may not shorten this time.

Response. 10 CFR 2.718 provides the presiding officer the power to regulate the course of the proceeding. In addition, under 10 CFR 2.711, licensing boards may, for good cause, shorten or lengthen the time required for filings. This provision expressly allows the boards to set deadlines for filings, such as the filing of contentions.

Comment. Multiple licensing boards should not be used because it could be too burdensome for intervenor groups with limited resources.

Response. The Commission recognizes that, in some instances, the use of multiple licensing boards can place a burden on all parties. For that reason, the NRC is careful to consider and account for the circumstances of each case and to ensure that the use of multiple boards will not prejudice any party. However, it is important to have flexibility to use multiple boards where it will not prejudice any party, as the use of more than one board can allow the effective litigation and resolution of a number of separate issues resulting in a more timely completion of the record and decision for the whole case.

Comment. The guidelines set forth in the Policy Statement should be codified through a rulemaking.

Response. The Commission is proposing to codify appropriate portions of the Policy Statement in this rulemaking. Because the Policy Statement deals primarily with case management and control, it may not be appropriate to convert everything in the Policy Statement to hard and fast requirements. The Commission believes that it is important to retain flexibility to manage proceedings as the situation warrants.

Comment. A licensing board should be able to raise any safety issue that is material to health and safety, regardless of whether it is a substantial issue.

Response. If a licensing board determines in the course of a hearing that a safety issue exists that has not been raised by a party, it may refer the matter to the Commission with a recommendation on how the issue should be addressed. Some issues raised by a licensing board sua sponte may be addressed appropriately through adjudications, while others may not. In fact, the Commission has a process for considering the board's recommendation on sua sponte issues and that process can result in the issues being considered in the adjudication or being referred to the NRC staff for review and resolution without litigation.

Comment. The Commission's suggestion that the licensing boards limit the use of summary disposition motions goes too far.

Response. There are appropriate times for filing summary disposition motions. There may be times in the proceeding where these motions should not be entertained because consideration of the motions would unduly delay or complicate proceedings by distracting responding parties from addressing other pending issues. Moreover, there may be situations in which the time required to consider summary disposition motions and responses and to issue a ruling on these motions will substantially exceed the time needed to complete the hearing and record on the issues. The licensing board is in a good position to determine when the use of summary disposition would be appropriate and would not delay the ultimate resolution of issues and the Commission will provide the boards the flexibility to make that determination in most proceedings.

Comment. The limitation of discovery on the NRC staff until after the Safety Evaluation Report (SER) and Final Environmental Statement (FES) is overly broad and could delay the proceeding.

Response. The most fruitful time for discovery of NRC staff review documents is after the staff has developed its position. Subjecting the NRC staff to extensive discovery early in the process will often require the staff to divert its resources from completing its review. In addition, early discovery before the NRC staff has finalized the major part of its reviews may present a misleading impression of staff views. Finally, a focus on discovery against the NRC staff diverts the focus from the real issues in a licensing proceeding, which is the adequacy of the applicant's/licensee's proposal. Nevertheless, the NRC recognizes the importance of timely completion of the NRC staff's reviews and the staff is making a concerted effort at rigorous planning and scheduling of staff reviews. In this regard, the NRC staff has continued to refine and complete its standard review plans and its review guidance and has moved to a more performance-goal oriented approach in an effort to improve the timeliness of its reviews. Steering and oversight committees are sometimes formed to direct the course of major technical review efforts and

detailed milestone schedules are developed and tracked. NRC managers and staff are held accountable for these schedules. The NRC will continue with these efforts to improve the timeliness of licensing reviews.

Comment. The hearing should not be delayed until after the FES and the SER are issued as it could delay the proceedings.

Response. In Subpart G proceedings where the NRC staff is a party, the staff may not be in a position to provide testimony or take a final position on many issues until these documents have been completed. In many cases, it would be unproductive and cumbersome to have a two-pronged hearing with one part of the hearing being conducted before issuance of the NRC staff documents and a second hearing after issuance of the documents.

Comment. Licensing boards should rule on standing before the submission of contentions.

Response. The Commission expects that standing issues would be among the first issues addressed by a presiding officer in an adjudication, but that does not dictate that the submission of contentions should be delayed. The Commission also expects that concrete issues of concern to the public would be raised on the basis of the application or the proposal for NRC action and can be identified at the same time the petition addresses the matter of standing.

Comment. The Commission should apply the Federal Rules of Evidence with respect to scientific testimony.

Response. Neither the current procedures nor the proposed regulations contain a special provision for scientific testimony. Scientific testimony can be tested and evaluated in the same manner as other evidence presented at a hearing. Although the Commission has not required the application of the Federal Rules of Evidence in NRC adjudicatory proceedings, presiding officers and licensing boards have always looked to the Federal Rules for guidance in appropriate circumstances. The Commission continues to believe that greater informality and flexibility in the presentation of evidence in hearings, rather than the inflexible use of the formal rules of evidence imposed in the Federal courts, can result in more effective and efficient issue resolution.

Comment. The Commission should place limitations on cross-examination.

Response. The proposed changes to procedures for the less formal process do place limitations on cross-examination. Under these procedures, the presiding officer may question witnesses who testify at the hearing, but parties may not do so. However, parties may present the presiding officer with written suggestions for questions to be asked. The proposed rules would also allow motions to the presiding officer to allow cross-examination by the parties where this would be necessary to develop an adequate record. As a general matter, the presiding officer is authorized, under both the existing and proposed rules, to limit cross-examination in appropriate circumstances. The Commission requests public comments on these proposals to limit cross examination (see below in E. Summary and General Questions).

Comment. The Commission should be actively involved in overseeing proceedings and there should be expedited interlocutory review for novel legal or policy issues.

Response. Although providing for a Commission ruling on significant issues before the hearing is completed can focus the issues to be addressed in a hearing, on balance, the Commission believes that the additional delay necessarily associated with interlocutory appeals outweighs any potential reduction in hearing time that may come about through a Commission decision in such an appeal. Accordingly, the Commission has decided that it should depart from existing practice by not permitting interlocutory appeals based solely on the existence of novel legal or policy issues.

Comment. The Commission should actively review the performance of licensing boards and ensure that boards make prompt decisions.

Response. The Commission has been carefully monitoring all licensing board proceedings to ensure that they are being appropriately managed to avoid unnecessary delay. The Commission, through its Policy Statements and case-specific orders, has been encouraging licensing boards to issue timely decisions consistent with the boards' independence in performing their decisionmaking functions. The proposed rule explicitly addresses case management and would require the presiding officers/boards to notify the Commission when there is non-trivial delay in completion of the proceeding. The Commission wishes to emphasize, however, that the Commission's oversight of licensing boards with respect to case management is not intended to intrude on the independence of licensing boards in discharging their independent decisionmaking responsibilities.

D. Comments From Hearing Process Workshop

The October 26–27, 1999, hearing process workshop involved participants from the nuclear industry, states, public interest groups, the academic community, ALJ community, and the NRC. Transcripts from the workshop are available in NRC's Public Document Room. The major comments and the Commission's responses follow.

Comment. In general, the public citizen group participants questioned whether there was a need to make any changes to the current hearing procedures. They also voiced concerns about any limitations on current discovery and cross-examination. Industry representatives advocated changes to the hearing process, which they viewed as becoming increasingly and needlessly time consuming.

Response. The Commission believes that there is a need to take some action to improve the management of the adjudicatory process to avoid needless delay and unproductive litigation. Possible action could range from the imposition of case management requirements in all proceedings to the removal of unnecessary formalities that divert the parties efforts and focus from addressing the merits of real issues. The NRC believes that using a less formal hearing process with simplified procedures for most types of proceedings along with a requirement for well-supported specific contentions in all cases can improve NRC hearings, limit unproductive litigation, and at the same time ease the burdens in hearing preparation and participation in hearings for public participants.

As proposed in this rulemaking, well-supported specific contentions would be required in all proceedings, just as they are now required in those proceedings that use the NRC's formal hearing procedures. Petitioners generally have been able to meet the current specific contention requirements and the Commission would not expect the application of those requirements to informal proceedings to adversely effect public participation. Indeed, by focusing litigation efforts on specific and well-defined issues, all parties will be relieved of the burden of having to develop evidence and prepare a case to address possibly wide-ranging, vague, undefined issues.

Under this proposed rule, early document disclosure and witness identification would be required of all parties in every case. In proceedings using informal hearing procedures, no other discovery would be permitted.

This approach should reduce the burdens on public participants because petitioners would be given access to pertinent information without the need to file formal discovery requests, and would not be burdened with responding to formal discovery requests. Because the proposed disclosure provision would require the applicant/licensee and the NRC staff to disclose and make available all documents in their possession that directly relate to the matter that is the subject of the hearing, there should be a wealth of information available for the parties to prepare their cases.

Under the proposed rules, cross-examination would be retained for formal hearings. Under the proposed informal hearing procedures, only the presiding officer would question witnesses. Nevertheless, the informal procedures would allow the parties to suggest questions for the presiding officer to ask and they would permit motions to allow the parties themselves to cross-examine witnesses where necessary to develop an adequate record for decision. This should ensure that there is questioning of witnesses sufficient to develop an adequate record. The Commission requests public comments on the provisions limiting cross examination (see below in E. Summary and General Questions).

Comment. Participants raised concerns regarding case management practices by the licensing boards. One concern raised by the representatives of the nuclear industry was the perceived lack of control by presiding officers in some informal and formal proceedings. According to these participants, in informal proceedings, presiding officers too often allow pleadings to be amended or allow an unlimited number of reply briefs. Nuclear industry participants stated that discovery in formal proceedings takes too long, that the NRC staff requires too much time to issue a Final Environmental Impact Statement (FEIS) and Safety Evaluation Report (SER), and that the presiding officer/board takes too long to issue an initial decision.

Response. Strong case management is an integral part of an efficient and effective hearing process. The Commission expects presiding officers/boards to manage all adjudications carefully and attentively. Tools to be used to this end are reflected in the proposed rule. The Commission proposes to modify the intervention requirements for informal hearings to require the submission of specific, well-supported contentions as is currently required for formal hearings. This should result in hearings that focus on well-defined issues and obviate the need to receive evidence of questionable relevance. The Commission also proposes to modify the informal hearing procedures in a manner that should reduce the amount of motion practice over what hearing procedures to use. In addition, as noted earlier, the NRC staff itself is taking steps to better assure the timely completion of its review and associated documents. Finally, the Commission proposes hearing management procedures that provide for the integration of the NRC staff's review documents into the hearing schedules.

Comment. One of the attributes of the formal process is cross-examination of witnesses. Nuclear industry participants urged that cross-examination not be used as it is often not an effective or efficient way to determine the truth. However, citizen group participants argued that cross-examination is effective and oppose any elimination of this tool. Some nuclear industry participants argued that cross-examination should only be an optional tool that can be used if it is determined that it is necessary. These representatives also urged that cross-examination must be used in enforcement hearings. Other licensee representatives suggested that certain proceedings, e.g. proceedings involving license applications for activities posing low risk from a public health and safety perspective, should not use cross-examination. Citizen group participants pointed out that there may not be agreement as to which proceedings involve ''low risk'' activities.

Response. The proposed rule provides for cross-examination by the parties in enforcement proceedings and proceedings involving complex issues that warrant the use of formal subpart G hearing procedures. Other NRC proceedings would utilize the less formal procedures that do not include cross-examination by the parties unless ordered by the presiding officer or the Commission in a particular case. Nonetheless, these proceedings would involve questioning of witnesses by the presiding officer and further cross-examination by the parties themselves where the presiding officer determines that is necessary to develop an adequate record for decision. The Commission believes that this approach strikes an appropriate balance in the use of cross-examination.

Comment. Another attribute of the current formal proceedings is discovery. The representatives of citizen groups view discovery as essential because they do not have access to the information that licensees and the NRC staff do and they perceive this as a disadvantage early in the proceedings. Citizen group representatives also noted ready access to information can be frustrated by the fact that the application may be incomplete and is supplemented through the NRC staff's Requests for Additional Information (RAI). In response to the citizen group representatives' concerns, the nuclear industry representatives suggested that interested parties should attend staff-applicant meetings that take place before the submission of an application. Citizen group representatives suggested that interested individuals should be permitted to participate in these meetings instead of just observing. One option suggested by the administrative law judge participant was that the NRC model its discovery rules on Rule 26 of the Federal Rules of Civil Procedure.

Response. The proposed rules provide that in all adjudicatory proceedings (whether formal or informal), the parties would exchange relevant documents and other information at the beginning of the proceeding. This approach is based on Rule 26 of the Federal Rules of Civil Procedure. Parties would also be required to exchange the identity of expert witnesses, as well as existing reports of their opinions. The more formal discovery available under the formal hearing procedures would remain for the formal hearings.

The Commission encourages interested persons to attend meetings between the NRC staff and the applicant, both before and after a license application is submitted. These meetings are noticed in advance and are open to all to observe. Public attendance at these meetings should provide individuals or groups early access to information so that they may participate more effectively in the hearing process. This may also result in reduction of issues that must be adjudicated.

Comment. The representatives of citizen groups and local governments argued that the rules for standing should be liberalized. These participants noted that NRC proceedings require much time and money and are not undertaken lightly.

Response. Members of the public who have an interest that will be affected by a proposed action should be readily able to establish their standing under the standards in the proposed rule. At the same time, the Commission recognizes that there may be instances where persons who do not have a direct interest and cannot demonstrate standing nevertheless are able to make a substantial contribution to the development of the record in the proceeding. Accordingly, the Commission proposes to codify the six

criteria for discretionary intervention which were first articulated in Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI–76–27, 4 NRC 610, 617 (1976): (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; (iii) the possible effect of any decision or order that may be issued in the proceeding on the requestor's/petitioner's interests; (iv) the availability of other means for protecting the interests of the requestor/petitioner; (v) the extent to which the requestor's/petitioner's interests will be represented by existing parties; and (vi) the extent to which the requestor's/petitioner's participation will inappropriately broaden the issues or delay the proceeding. The Commission requests public comment on this proposal (see below in E. Summary and General Questions).

Comment. Citizen group representatives stated that the NRC should return to its pre-1989 contention standards. Some of these participants noted that an intervenor, under current practice, often has to prove its case in order to have a contention admitted. These participants also believe that the current contention standard has a chilling effect on citizen group participation. The citizen group representatives also stated that they had difficulty meeting the current contention standard because they lacked information about the application. In addition, the NRC staff practice of issuing requests for information (RAIs) for a purportedly incomplete application is said to place additional burdens on intervenors to continually support their contentions on a changing application. However, a nuclear industry representative believed that this high contention threshold has been necessary to ensure that hearings are focused on legitimate issues.

Response. The NRC believes that the current contention standard is appropriate and should not be changed. This standard is necessary to ensure that hearings cover genuine and pertinent issues of concern and that the issues are framed and supported concisely enough at the outset to ensure that the proceedings are effective and focused on real, concrete issues. Ample information is provided in the application and related documents.

Comment. All citizen group participants stated that there is a need for intervenor funding. These participants argued that if the intervenors had access to resources for participation, there could be fewer delays in the proceeding and they could better assist the NRC in reaching the correct result. Nuclear industry representatives disagreed with these assertions. One participant noted that currently legislation prohibits the NRC from providing intervenor funding.

Response. Congress, in section 502 of the Energy and Water Development Appropriations Act for FY 1993, has barred the use of appropriated monies to pay the expenses of, or otherwise compensate, parties intervening in NRC regulatory or adjudicatory proceedings. Public Law 102–377, Title V, section 502, 106 Stat. 1342 (1992), 5 U.S.C. 504 note. Therefore, the proposed rule does not address this issue.

E. Summary and General Questions

From experience with, and the comments on, the 1998 Policy Statement, from the valuable discussions in the hearing process workshop, and consistent with the views expressed in the Staff Requirements Memorandum of July 22, 1999, the Commission has decided to propose modifications to the hearing procedures in 10 CFR part 2. As described in more detail below, the proposed rule would revise a number of current provisions of 10 CFR part 2 in order to fashion hearing procedures that are tailored to the different kinds of licensing and regulatory activities the Commission conducts. The Commission expects that the revised hearing procedures, ranging from informal to formal, will improve the effectiveness and efficiency of NRC's hearing process, and better focus and utilize the limited resources of all involved. The Commission seeks public comment on all aspects of this proposed rulemaking. In addition, the Commission has set forth a number of specific questions focusing on specific issues with respect to restructuring the agency's adjudicatory process; the Commission seeks public comment on these issues, together with alternative proposals where a member of the public disagrees with the Commission's proposals. The Commission's SRM on SECY–00–0017 approving the publication of this proposed rule, and the vote sheets of individual Commissioners, are available for viewing at *http://www.nrc.gov/NRC/COMMISSION/VOTE/index.html.* It is particularly important to review the individual Commissioner's vote sheets for insights on the issues considered by the Commission.

(1) *Overall Approach for Informal Hearings.* In preparing the proposed rule, the Commission carefully considered the advantages and disadvantages of each aspect of both formal hearings and informal hearings, attempting to balance the competing considerations of accurate decisionmaking, ensuring protection of public health and safety, timeliness of Commission decisions, and maintaining public confidence in the decisionmaking process. The proposed rule reflects the Commission's current judgment about how these competing considerations should be accommodated in the NRC's hearing processes.

Nonetheless, the Commission is aware that various NRC stakeholders may have differing perspectives on the relative importance of these considerations and differing views on the balance to be struck among these considerations. The Commission is interested in public comments on the relevant considerations that should inform the Commission's decision in adopting informal hearing procedures, and whether the Commission's strategy in moving towards informal hearings should be continued. Overall, the Commission requests public comments identifying any aspect of the proposed rule's informal and formal hearing procedures which the commenter believes could be improved, together with specific proposals for improvement and an assessment of the proposal against relevant considerations, including due process, fundamental fairness, the need for timely decisionmaking, and accurate factfinding.

The Commission also seeks comments on whether the informal hearing processes embodied in subpart L and subpart N should be augmented or even supplanted by more informal, legislative-style hearing procedures. The informal hearing tracks currently approved by the Commission in part 2, as well as the procedures in subparts L and N that are addressed in this proposed rulemaking, all involve to a greater or lesser extent adversarial-style proceedings. In adversarial-style proceedings, the identification and framing of the issues, and development of the record is primarily under the control of the parties through their submission of contentions, and the presentation of testimony and submission of evidence to support their positions; the presiding officer is responsible for ensuring that the record is adequate for decision on the issues raised by the parties and for deciding law and facts based upon the record developed. A possible alternative to the adversarial concept, at least for matters for which subpart L and subpart N

procedures apply, would be to treat the proceedings as a legislative-style hearing, in which the Commission or presiding officer is responsible for the framing of issues and the development of the record, as well as being the ultimate decisionmaker. One possible method of implementing this approach would be for the Commission to be the presiding officer as in subpart M (§ 2.1319) rendering the decision; determinations of standing would be based less on judicial standards and more on ability of the hearing participant to contribute to the careful discussion of the issues; written submissions would be expected as a matter of course, as would oral presentations, both types being limited by regulations on length; and questioning in an oral hearing would be by the Commission itself, with some room for limited ''cross-examination'' of testifying witnesses by other hearing participants. The Commission requests public comment on the feasibility and desirability of using legislative-style hearing procedures for matters that would otherwise be subject to subpart L and subpart N procedures.

(2) *Hearing Tracks.* Under the hearing process reflected in the existing regulations in 10 CFR part 2, there are at least four hearing ''tracks'' or integrated sets of procedures that characterize a proceeding: subpart G that, apart from a number of provisions of general applicability, contains the procedures for a formal hearing; subpart L which contains the procedures for most informal hearings currently used for materials licensing actions; subpart M which contains the procedures for informal hearings on all license transfer actions; and subpart K which contains procedures for a ''hybrid'' hearing on spent fuel storage capacity expansions.

In reformulating the NRC's hearing process, the Commission believes that there should be at least three tracks—a formal hearing track, an informal hearing track, and as provided by statute, a hybrid procedure—but there is uncertainty over the value of additional, more specialized tracts within each of these broader categories. In the proposed rule, the Commission would retain a single formal hearing track—proposed subpart G—and the specialized ''hybrid'' hearing track—subpart K—but it would also provide for three different informal hearing tracks—revised subpart L for nearly all hearings; subpart M for license transfer hearings; and a new subpart N for expedited informal hearings. Formal hearings would be utilized only for proceedings specifically identified in the proposed rule, and for nuclear reactor licensing proceedings involving complex issues (see below in II.B.(2)). However, there are a number of alternatives for restructuring the overall NRC hearing processes that may offer some benefits in reduced complexity, thereby contributing to more expeditious conduct of hearings and increased public understanding and confidence in the fairness and efficacy of the hearings.

One alternative approach would be to reduce the hearing tracks to three—a single formal hearing procedure, a generally-applicable informal hearing procedure, and to comply with a statutory requirement a single hybrid procedure for expansions of spent nuclear fuel storage capacity at civilian nuclear power plants (currently reflected by the procedures in subpart K). Under this approach, the presiding officer would have the flexibility to adapt the selected hearing track to suit the case. For example, in the case of a formal hearing, the presiding officer could be authorized to limit discovery and to constrain duplicative testimony and non-productive cross-examination. Similarly, in the case of an informal hearing the presiding officer could be empowered to allow limited discovery in appropriate cases. The Commission requests public comments on: (i) The proposed rule's approach of multiple, specialized tracks tailored to certain types of issues, (ii) whether additional specialized tracks should be considered, (iii) the desirability of adopting an alternative approach of a single formal and two informal hearing procedures, with the presiding officer given the discretion to tailor the procedures to suit the circumstances of each case.

Another matter about which the Commission seeks public comment is whether there are better alternatives to the proposed rule's approach for defining what type of proceedings are appropriate for formal or informal hearing procedures. Is the proposed category of cases to which formal hearing procedures would apply too narrow? On the other hand, an alternative would be for the rule to specify that all proceedings would be informal hearings unless one or more criteria are met for the use of formal, subpart G hearing procedures. Some possible criteria would be whether the proceeding presents complex issues, raises difficult disputed issues of material fact or of expert opinion which cannot be resolved with sufficient accuracy except in a formal hearing (i.e., similar to the standard for a formal hearing in design certification rulemaking, 10 CFR 52.51(b)), and—to ensure that significant cases are captured—matters for which preparation of an environmental impact statement is necessary. Determinations regarding the criteria would be initially screened by the presiding officer, and certified to the Commission for final determination. The Commission requests public comments on this alternative, as well as proposals for other criteria for determining formal versus informal hearing procedures. Commenters should identify the perceived advantages and disadvantages of suggested alternative approaches as compared with the proposed rule's approach for determining the applicability of formal and informal hearing procedures.

(3) *Presiding Officer.* Under the hearing process reflected in the existing regulations in part 2, an Administrative Judge or an Atomic Safety and Licensing Board normally serves as the presiding officer to conduct the entire adjudicatory proceeding starting with the oversight of prehearing activities, through the conduct of the hearing itself, and ending with the formulation and issuance of an initial decision. A potential exception under current rules involves subpart M on license transfer actions which recognizes that the Commission itself may choose to serve as presiding officer or to appoint a person other than an Administrative Judge or a licensing board to serve as presiding officer in some cases. The Commission welcomes comments on whether there should be criteria for determining whether a proceeding should be held before an administrative judge/licensing board or the Commission and, if so, what those criteria should be.

(4) *Discovery.* Under the existing part 2, parties are permitted discovery ranging from document production to multiple interrogatories and depositions of other parties' witnesses. In the proposals that follow, there would be a general requirement in every proceeding that the parties disclose and make available pertinent documents and identify witnesses. Additional discovery would be available in proceedings that use the formal hearing procedures of subpart G. However, in view of the general availability of licensing and regulatory documents under NRC regulatory practice, it is not clear that discovery is needed in most NRC adjudications beyond the exchange of documents and written disclosures described above. The Commission welcomes comments on whether discovery should be eliminated or limited to requests from the presiding officer. Would a general disclosure obligation of the sort that would be required in the proposals that follow be

sufficient discovery for all NRC adjudicatory proceedings?

(5) *Witnesses, Cross-Examination, and Oral Statements by the Parties.* Under the existing part 2, as well as under the proposals that follow, provision is made for oral testimony of the parties' witnesses, although some proceedings are to be based on written evidence alone. The Commission seeks public comment on the degree to which oral testimony and questioning of witnesses should be used in each of the proposed hearing tracks.

With respect to cross-examination, the proposed rule reflects the Commission's tentative determination that full-cross examination conducted by the parties often may not be the most effective means for ensuring that all relevant and material information with respect to a contested issue is most efficiently developed for the record of the proceeding. Thus, the informal hearing procedures contain provisions designating the presiding officer with the authority and responsibility to conduct the examination of witnesses, in some cases after considering suggested questions for witnesses posed by the parties. While this approach places greater emphasis and responsibility on the presiding officer to develop a full and complete record, some might argue that it is less supportive of the desires of the parties to focus the questioning on the information that they believe is most cogent and relevant. In addition, there may be concerns that this approach places too much responsibility and burden on the presiding officer—rather than on the parties—to establish the record on which the decision is to be based. Thus, with respect to cross-examination and questioning by the presiding officer, the Commission requests public comment on: (i) The relative value and drawbacks of cross-examination; (ii) whether the proposed approach that would limit cross-examination in favor of questioning by the presiding officer is appropriate; (iii), whether subpart L should retain traditional cross-examination as a fundamental element of any oral hearing; and (iv) assuming that cross-examination is necessary or more effective in certain circumstances to afford parties fundamental fairness, timely and effective identification of relevant and material information, or to provide public confidence in the hearing process, the appropriate criteria for identifying and distinguishing between proceedings where cross-examination should be used, versus those where cross-examination is not necessary.

Assuming that cross-examination as of right is not afforded in certain circumstances (as is currently proposed for, inter alia, subparts L and N), the Commission requests public comment regarding whether parties should be permitted to make oral statements of position, and, if so, whether time limits should be placed on such statements.

(6) *Time Limitations.* Although the existing part 2 and the proposals that follow set various time limits for filings, petitions, responses and the like,[3] there are no firm time schedules or limitations established within which major aspects or parts of the hearing process (e.g., discovery, issuance of an initial decision following the close of the evidentiary record) must be completed. The Commission welcomes comments on whether firm schedules or milestones should be established in the NRC's rules of practice in 10 CFR part 2.

(7) *Request for Hearing and Contentions.* In proposed subpart C, the Commission addresses the filing of petitions/requests for hearings and contentions for all proceedings. The Commission seeks public comment and views on the appropriate time frame for filing a petition/request for hearing and contentions.

(8) *Alternative Dispute Resolution.* Various methods of alternative dispute resolution (ADR) can serve to satisfy the parties on matters of concern and obviate the need to litigate issues in an agency adjudication. ADR is discussed at some length in the proposals that follow. The Commission welcomes comments and views on whether parties to NRC adjudications should be required to engage in ADR.

II. Description and Discussion of the Proposed Rule

A. Overview

To provide for a more effective and efficient hearing process, the Commission proposes to modify the procedures in 10 CFR part 2 to: (i) Establish a new subpart C to consolidate in one place the Commission's procedures for ruling on requests for hearing/petitions for leave to intervene and admission of contentions, to establish criteria for determining the specific hearing procedures (e.g.: formal—subpart G; informal—subparts L, M; hybrid—subpart K) that are to be used in particular cases and to set out the hearing-related procedures of general applicability; (ii) substantially modify the hearing procedures in the current subpart G and subpart L and expand the scope of applicability of those informal procedures; (iii) establish a new subpart N that will provide ''fast track'' hearing procedures to be used in appropriate cases; and (iv) make conforming amendments as necessary throughout Part 2.

The proposed new subpart C—Rules of General Applicability for NRC Adjudicatory Hearings —would be the starting point for consideration of, and rulings on, all requests for hearing/petitions for leave to intervene and the admissibility of contentions, and for selecting the appropriate hearing procedures to be applied in the remainder of the case. The Commission, a designated presiding officer, or a designated Atomic Safety and Licensing Board would rule on requests for hearing/petitions to intervene and the admissibility of proffered contentions using the standards and procedures of subpart C. Where it is determined that a hearing should be held, the Commission, presiding officer, or licensing board would next examine the nature of the action that is the subject of the hearing and the contentions admitted for litigation, apply the criteria in subpart C to determine the specific procedures/subpart that should be used for the adjudication, and issue an order for hearing designating the procedures/subpart to be used for the remainder of the proceeding. The hearing activities would then proceed under the designated subpart (e.g. subpart G for formal hearings, subpart L for general, informal hearings, subpart M for license transfer cases, subpart N for an expedited ''fast track'' hearing). subpart C also contains rules applicable in general to hearings conducted under the respective subparts.

The hearing procedure selection provision of proposed subpart C would reflect in large part the range of proceedings that currently use informal hearing procedures under the existing rules. This is in keeping with the Commission's intent to expand the use of informal procedures in an attempt to improve the effectiveness and efficiency of the NRC's hearing processes. Subject to certain exceptions, the norm would be an informal hearing process. These exceptions are: (i) Licensing of uranium enrichment facilities, (ii) initial licensing authorizing the construction of a high-level waste geological repository, and initial licensing authorizing the repository to receive and possess high level waste, (iii) enforcement matters, and (iv) complex issues in reactor

[3] It should be noted that the proposed revisions to 10 CFR part 2 generally do not contain special extended deadlines for NRC staff responses to petitions, motions and pleadings. The elimination of the allowance of extra time for NRC staff responses is part of the Commission's effort to increase the efficiency of NRC adjudications.

licensing. The hearing procedure selection process and criteria are discussed below under the description of § 2.310.

The Commission proposes to retain essentially all of the current procedures specific to the conduct of formal hearings under subpart G, but to substantially modify the existing procedures for informal hearings in subpart L to bring them more in line with the current procedures for hearings in subpart M for license transfer proceedings. The Commission also proposes a new subpart N that contains procedures for a ''fast track'' hearing. subpart N would provide for an expedited oral hearing and oral motions, and limit written submissions and the protracted written responses they often entail. The primary modifications to subparts G and M involve the removal of provisions that are generally applicable to all proceedings and the relocation of the essence of those common provisions to subpart C. Conforming changes would be made to other subparts of 10 CFR part 2.

B. Specific Proposals and Request for Comment

1. Subpart C—Sections 2.300–2.347

The Commission proposes to establish a new subpart C that would contain the rules of general applicability for considering hearing requests, petitions to intervene and proffered contentions, for determining the appropriate hearing process procedures to use for a particular proceeding, and for establishing the general powers and duties of presiding officers for the NRC hearing process. The provisions of subpart C would generally apply to all NRC adjudications conducted under the authority of the Atomic Energy Act of 1954, the Energy Reorganization Act of 1974 and 10 CFR part 2.

(a) Provisions of General Applicability. A large part of the proposed subpart C essentially restates and updates the substance of many of the rules of general applicability that are currently contained in subpart G. The Commission proposes to transfer the following provisions, with modifications, from the existing subpart G to the proposed subpart C:

New section	Old section	Description/modification
2.301	2.700a	None.
2.302	2.701	Addresses facsimile transmissions and electronic mail.
2.303	2.702	Clarified; no substantive change.
2.304	2.708, 2.709	Addresses electronic mail; modifies format requirements of documents.
2.305	2.712	Addresses facsimile and electronic mail. Adds provision requiring service by most expeditious means.
2.306	2.710	Addresses computation of time for electronic mail and facsimile transmissions.
2.307	2.711	None.
2.308	NA	New section on Secretary's duty to forward petitions/requests for hearing to Commission or Chief Judge.
2.309	2.714	Changes requirement for standing; requires filing of contentions with petition/request for hearing.
2.310	NA	New section setting forth criteria for different hearing tracks.
2.311	2.714a	None.
2.312	2.703	Clarified; no substantive change.
2.313	2.704	None.
2.314	2.713	Simplified and expanded.
2.315	2.715	Clarified; no substantive change.
2.316	2.715a	None.
2.317	2.716, 2.761a	Adds provision for establishment of separate hearings; no change to provision on consolidation of proceedings.
2.318	2.717	None.
2.319	2.718, 2.1233(e)	Clarified; consolidates several provisions relating to authority of presiding officer.
2.320	2.707	None.
2.321	2.721	None.
2.322	2.722	None.
2.323	2.730	Clarified and expanded to address motions for referral, reconsideration and certification.
2.324	2.731	None.
2.325	2.732	None.
2.326	2.734	None.
2.327	2.750	Removed subsection on provision of free transcripts.
2.328	2.751	None.
2.329	2.752, 2.751a	Consolidates and adds provisions on purpose and objectives of prehearing conferences.
2.330	2.753	None.
2.331	2.755	None.
2.332	NA	New section on case scheduling and management.
2.333	2.757	None.
2.334	NA	New section setting forth schedules for proceedings.
2.335	2.758	None.
2.336	NA	New requirement for disclosure of materials.
2.337	NA	New section on Alternative Dispute Resolution (ADR).
2.338	2.761	None.
2.339	2.760a, 2.764	Consolidates provisions on effectiveness of initial decisions.
2.340	2.786	Clarified, codifies Commission practice of discretionary review of requests for interlocutory appeals.
2.341	2.788	None.
2.342	2.763	None.
2.343	2.770	None.
2.344	2.771	NRC staff not provided additional time to respond to petitions for reconsideration.

New section	Old section	Description/modification
2.345	2.772	Clarified; deletes authority to extend time for Commission review of Director's Decisions under § 2.206.
2.346	2.780	None.
2.347	2.781	None.
2.390	2.790	None.

(b) *Section 2.308—Secretary's Treatment of Requests for Hearing/Petitions to Intervene.*

Proposed § 2.308 is a ''housekeeping provision'' that describes the action the Secretary of the Commission would take when requests for hearing/petitions to intervene, contentions, answers and replies are received. Under this section, the Secretary would not take action on the merits or substance of the pleadings but would forward the papers to the Commission or to the Chief Judge of the Atomic Safety and Licensing Board Panel, as appropriate, for further action.

(c) *Section 2.309—Hearing Requests, Petitions to Intervene, Requirements for Standing and Contentions.*

Proposed § 2.309 establishes the basic requirements for all requests for hearing or petitions to intervene in any NRC adjudicatory proceeding. The section incorporates the basic standing and ''one good contention'' requirements of existing 10 CFR 2.714 and applies those requirements to all NRC adjudicatory proceedings, whether formal (subpart G), informal (subparts L, M and N), hybrid (subpart K) or ''fast track'' (subpart N).

Standing. The requirements to establish standing for intervention-as-of-right, as set forth in existing § 2.714, would continue under proposed § 2.309. For intervention in the proceeding on the licensing of the HLW geologic repository, an additional factor—relating to the petitioner's compliance with prehearing disclosure requirements under subpart J—must be considered in any ruling on intervention. Otherwise, the Commission expects its boards and presiding officers to look to the ample NRC caselaw on standing to interpret and apply this standard.

Discretionary Intervention. Under proposed § 2.309, the presiding officer would consider admitting the petitioner as a matter of discretion where the petitioner fails to establish his or her standing to intervene as-of-right, if the petitioner requests such consideration. In § 2.309(b)(2), the Commission proposes to codify the discretionary intervention factors that were established in its Pebble Springs decision (Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI–76–27, 4 NRC 610 (1976)) and to require the presiding officers or licensing boards to apply those factors in all cases where a petitioner is found to lack standing to intervene as-of-right and the petitioner, in the initial petition, has asked for such consideration and addressed the pertinent factors. In this way, the Commission hopes to ''underscore the fundamental importance of meaningful public participation in (its) adjudicatory process,'' Pebble Springs, 4 NRC at 615, by allowing the participation of persons who have shown an ability to contribute to the development of the evidentiary record, even though they cannot show the traditional interest in the proceeding.

The Commission requests public comment and suggestions on whether the standard for discretionary intervention should be extended by providing an additional alternative for discretionary intervention in situations when another party has already established standing and the discretionary intervenor may ''reasonably be expected to assist in developing a sound record.''

The Commission also requests public comments on whether, as an alternative to codification of the six-part Pebble Springs standard for discretionary intervention, the Commission should adopt a simpler test for permitting discretionary intervention and the nature of such a standard. Commenters advocating a simpler standard should address how their alternative requirements would help ensure that proceedings are conducted in a timely fashion and are not made unduly complex by multiple intervenors.

Timing of Requests for Hearing/Petitions to Intervene and Contentions. Proposed § 2.309 established the requirements for the filing of petition/hearing requests, the content of the request, and the standards that must be met for a late-filed request. Different requirements are proposed for the timely filing of requests for hearings/petitions, depending on whether formal notice of the proceedings and opportunity for hearing are published in the **Federal Register**. For those proceedings for which a **Federal Register** notice has been published, the requirements are much the same as those in existing 10 CFR 2.714. For those proceedings for which a **Federal Register** notice is not published, the requirements are derived from existing § 2.1205 but also provide for publication of notice on the NRC Website, *http://www.nrc.gov*. The Commission already makes available on the NRC Website a broad range of information, including receipt of applications for licenses and license amendments, notices of availability of NRC reports, and notices of availability of NRC safety evaluations. See, e.g., 64 FR 48942; September 9, 1999. Internet access is becoming increasingly available to the general public. The Commission believes that, as a practical matter publication of notice on the NRC Website provides at least as much access to the notice for the public as publication in the **Federal Register**. However, notice on the NRC Website costs substantially less than publication in **Federal Register**, and can be done in a more timely fashion than publication in the **Federal Register**. Accordingly, the Commission proposes that where **Federal Register** notice is not required by statute or regulation, any notice of agency action (for which an opportunity for hearing may be required) published on the NRC Website initiates the 45-day period in which timely requests for hearing must be filed. The Commission requests public comment on this proposal, including whether there are other notification methods that the NRC could utilize to provide timely notice of licensing actions which are not required to be noticed in the **Federal Register**.

Regardless of whether notice of the proceeding and opportunity for hearing is required to be published in the **Federal Register**, all proposed contentions must be filed as part of the initial request for hearing/petition to intervene. Recognizing the potential need for more time for preparation of the request/petition and contentions, the Commission proposes to provide a minimum of 45 days from the date of publication (either in the **Federal Register** or on the NRC Website) of the notice of opportunity to request a hearing for the filing of requests/petitions to intervene and contentions. Although this proposal represents a significant change from existing

requirements, the Commission believes this proposal will expedite proceedings in a manner that is fair to all interested stakeholders. The Commission requests public comment on this proposal, in particular, whether the proposed approach should be rejected and something closer to the current NRC practice be retained, viz., filing of petitions for hearing within thirty (30) days of notice, and filing of contentions later. The Commission also requests public comment and suggestions on whether it should allow seventy-five (75) days from notice of opportunity for hearing for filing of contentions, or whether some other time frame for requesting a hearing and submitting contentions should be established. Late-filed requests for hearing/petitions will continue to be governed by the criteria set forth in existing § 2.714.

Contentions. Proposed § 2.309(c) requires that the petition to intervene include the contentions that the petitioner proposes for litigation along with documentation and argument supporting the admission of the proffered contentions. Paragraphs (c)(1) and (2) of § 2.309 incorporate the longstanding contention support requirements of existing 10 CFR 2.714—no contention will be admitted for litigation in any NRC adjudicatory proceeding unless these requirements are met. By continuing to impose these contention support requirements, the Commission seeks to ensure that the adjudicatory process is used to address real, concrete, specific issues that are appropriate for litigation.

A significant change, relative to existing requirements, is that the requirement to proffer specific, adequately supported contentions in order to be admitted as a party to the proceeding would be extended to informal proceedings under subpart L. Under the existing subpart L, petitioners need only describe ''areas of concern about the licensing activity that is the subject matter of the proceeding'' (10 CFR 2.1205(e)(3)). This sometimes leads to protracted ''paper'' litigation over ill-defined issues and the resulting development of an unnecessarily large, unfocused evidentiary record for decision. The Presiding officer is then burdened with the need to sift through the record to identify the basic issues and pertinent evidence necessary for a decision. The requirement to have specific contentions with a supporting statement of the facts alleged or expert opinion that provide the bases for them in all hearings should focus litigation on real, concrete issues and result in a better, more understandable record for decision.

Appropriate Hearing Procedures. Proposed § 2.309(g) requires that the request for hearing/petition to intervene address the question of the type of hearing procedures (e.g., formal hearings under subpart G, informal hearings under subpart L, ''fast track'' informal procedures under subpart N) that should be used for the proceeding. This is not a requirement for admission as a party to the proceeding, but a requestor/petitioner who fails to address the hearing procedure issue would not later be heard to complain in any appeal of the hearing procedure selection ruling. The Commission requests public comment on whether, if the Commission adopts the alternative proposal that requests for hearing be filed within thirty (30) days of appropriate notice (see discussion above under ''Timing of Requests for Hearing/Petitions to Intervene and Contentions''), but that contentions be filed later (e.g., within 75 days of such notice) the Commission should require the petitioner to set forth its views on appropriate hearing procedures at the deadline for filing contentions, rather than in the petition/request for hearing.

State and Local Governments and Affected Indian Tribes. Proposed § 2.309(d)(2) addresses the participation of State and local governments and affected Indian Tribes as parties in NRC adjudicatory proceedings. A significant change, relative to existing requirements in § 2.715(c), is that governments and affected Tribes would be explicitly relieved of the obligation to demonstrate standing in order to be admitted as a party to the proceeding. The proposed rule continues the existing requirement in § 2.1014(c) that governments and affected Tribes who wish to intervene as parties in a geological waste repository proceeding must file at least one good contention.

Answers and Replies. Proposed § 2.309(h) allows the applicant or licensee and the NRC staff twenty-five (25) days to file written answers to requests for hearing/petitions to intervene and contentions, and permits the petitioner to file a written reply to the applicant/licensee and staff answers within 5 days after service of any answer. No other written answers or replies will be entertained. The Commission seeks public comment on whether the proposed time limits for replies and answers should be expanded.

(d) *Section 2.310—Selection of Hearing Procedures.*

A very significant part of this hearing procedure rulemaking is the development of criteria for the selection of the hearing procedures to be used for the proceeding. These criteria set the course for the rest of the hearing by specifying the use of particular types or categories of procedures (e.g., formal, informal, informal-fast track, hybrid) for the remainder of the proceeding.

In developing the hearing procedure selection criteria, the Commission recognized that, with only a single exception, it has broad authority and substantial flexibility to choose among formal trial-type procedures, informal oral or written hearing procedures, or any combination of formal and informal hearing procedures. The Commission seeks specific comments and suggestions on the matter of criteria for the selection of cases where the use of formal hearing procedures would be of benefit.

(i) *Formal Hearing Procedures.*

Uranium Enrichment Facilities. The single exception to the Commission's broad authority to select hearing procedures involves proceedings on licensing the construction and operation of uranium enrichment facilities. Section 193 of the Atomic Energy Act of 1954, as amended, requires that hearings on uranium enrichment facility construction and operation be ''on the record'', thus requiring formal trial-type hearing procedures to be used. Proposed § 2.310(b) reflects this requirement by specifying that proceedings on licensing the construction and operation of uranium enrichment facilities must be conducted using the formal hearing procedures of subpart G.

Enforcement Matters. In its Staff Requirements Memorandum dated July 22, 1999, on SECY–99–006, Reexamination of the NRC Hearing Process, the Commission noted that formal hearing procedures would seem to be appropriate for hearings on enforcement actions. Several participants in the October 1999 hearing process workshop agreed, noting that formal hearing procedures would give the entity subject to the proposed enforcement action the opportunity to fully confront the proponent of the proposed enforcement action. The Commission believes that the formal hearing procedures of subpart G are appropriate for application in enforcement cases and proposes, in § 2.310(a) of the proposed rule, to continue to require the use of formal procedures in hearings on enforcement actions unless all parties agree to the use of informal procedures. The Commission requests comments on the proposal to require the application of formal hearing procedures in hearings involving enforcement matters and views on whether and when to allow

the use of informal hearing procedures for these matters.

High Level Waste Repository Licensing. For many years, the AEC and the NRC assumed that the Atomic Energy Act required formal agency hearings despite the fact that assumption had never been reduced to a definitive holding. Consistent with that assumption, in 1978 the NRC declared that the hearing it would hold on an application to construct and operate a repository for high level waste (HLW) would be formal. In final rules published in 1981, now codified at 10 CFR part 2, subpart J, the Commission provided for a mandatory formal hearing at the construction authorization stage and for an opportunity for a formal hearing before authorizing receipt and possession of high level waste at a geologic repository. Subsequently, Congress enacted the Nuclear Waste Policy Act of 1982, 42 U.S.C. 10101 *et seq.* That law includes no specific hearing requirements. Instead, it seems to contemplate, at Section 114, that the NRC will apply existing laws applicable to the construction and operation of nuclear facilities. In sum, there is no statutory requirement for a formal hearing on a high-level waste repository, but without a rule change, the NRC's regulations would require a formal hearing.

Although the Commission seeks to use more informal procedures for its hearings, the Commission has decided that the formal hearing procedures of subpart G should be used in proceedings for the initial authorization to construct a high-level waste repository, and proceedings for initial authorization to receive and possess high-level waste at a high level waste repository. The initial authorization of construction of a high-level waste repository, and the initial authorization to receive and possess high-level waste is likely to be highly controversial and involve a large number of complex issues, and thus fulfills one of the criteria in proposed § 2.310(c) for discretionary use of subpart G formal hearing procedures. Moreover, the Commission has long taken the position that it would provide a formal hearing for repository licensing, thereby raising public expectations. A change in Commission position to permit the use of informal procedures authorizing construction of a HLW repository and the receipt and possession of HLW at the repository would not advance public confidence in the Commission's decisionmaking process with respect to repository licensing. Based on these considerations, the Commission intends to continue to require, in § 2.310(e) of the proposed rule, that the initial application for construction of a HLW repository, and initial authorization to receive and possess HLW at the repository use formal hearing procedures of subpart G.

A balancing of these factors leads the Commission to a different conclusion with respect to hearing procedures for subsequent amendments to the authorization for the construction of a HLW repository, and for amendments of the authorization to receive and possess high-level waste. The public expectation of formal hearings likely extends only to the initial authorizations permitting construction and operation of the repository. Most important issues with respect to the technical feasibility and appropriateness of siting of the HLW repository are associated with initial construction licensing. Issues with respect to the adequacy of construction and the proposals for operation of the repository will be dealt with in the initial authorization for construction and operation—not subsequent changes to those authorizations. The Commission believes that it should retain flexibility to chose which hearing procedures to use in subsequent changes to the authorizations permitting construction and operation of any HLW repository. Accordingly, § 2.310 of the proposed rule provides that amendments to the construction authorization for the HLW repository, and amendments to the authority to receive and possess HLW should be subject to the same criteria as other proceedings in determining what hearing procedures will be used. The Commission welcomes public comment on this subject.

Complex Issues in Reactor Licensing. Reactor licensing proceedings can sometimes involve very complex technical safety and environmental issues, the resolution of which would clearly benefit from the application of more formal hearing procedures, including the use of cross-examination by the parties or the parties' experts. Accordingly, § 2.310(c) includes a criterion that would call for the use of the formal hearing procedures of subpart G in those reactor licensing proceedings that involve a large number of complex issues which the presiding officer determines can best be resolved through the application of formal hearing procedures. The Commission requests public comments on the appropriateness of this criterion, and representative examples of the type of ''complex issues'' that would benefit from the use of formal hearing procedures. The Commission also requests public comment on whether this criterion should be modified to instead provide for subpart G formal hearings in: (i) Initial power reactor construction permit proceedings, (ii) initial operating license proceedings, (iii) combined license issuance proceedings under 10 CFR part 52, subpart C, and (iv) hearings associated with authorizations to operate under a combined license under 10 CFR 52.103.

(ii) *Informal Hearing Procedures.*

Expansion of Spent Fuel Storage Capacity. Existing subpart K contains ''hybrid'' hearing procedures for use in proceedings on the expansion of spent fuel storage capacity at civilian nuclear power reactors. Subpart K provides for the use of the hybrid hearing procedures upon the request of any party. The Commission proposes to retain subpart K and, by the hearing procedure selection provision in § 2.310(d), make the hearing procedures of subpart K available for use in any proceeding on the expansion of spent fuel storage capacity at a power reactor.

License Transfers. Existing subpart M contains informal hearing procedures for use in proceedings involving reactor or materials license transfers. Subpart M requires the use of its hearing procedures for all license transfer proceedings for which a hearing request has been granted unless the Commission directs otherwise. The Commission proposes to retain subpart M and, by the hearing procedure selection provision in § 2.310(f), specify the use of subpart M hearing procedures in license transfer proceedings.

Other Proceedings. In § 2.310(g), the Commission proposes to apply the informal hearing procedures of the new subpart L to all other proceedings—i.e. proceedings involving hearings on the grant, renewal, licensee-initiated amendment or termination of licenses and permits subject to parts 30, 32 through 35, 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72. Under this provision, subpart L procedures would be used, as a general matter, for hearings on power reactor construction permit and operating license applications under parts 50 and 52, power reactor license renewal applications under part 54, power reactor license amendments under part 50, reactor operator licensing under part 55, and nearly all materials and spent fuel licensing matters. This would be a significant change from current hearing practice for reactor licensing matters. Under longstanding practice, proceedings on applications for reactor construction permits, operating licenses and operating license amendments have used the formal hearing procedures of existing subpart G. Similarly, in the Statement of

Considerations for the 1991 rule on reactor license renewal, the Commission stated that it would provide an ''opportunity for a formal public hearing'' on reactor license renewal applications (56 FR 64943, 64946; December 13, 1991). Under the proposed rule, reactor licensing proceedings will generally use informal hearing procedures. The procedures of subpart L could also be applied in hearings involving enforcement matters if all parties agree.

Fast Track Procedures. In § 2.310(h), the Commission proposes to apply the informal ''fast track'' hearing procedures of new subpart N in any proceeding (other than those designated in § 2.310(a)–(f) as requiring other procedures) in which the hearing is estimated to take no more than 2 days to complete or where all parties agree to the use of the ''fast track'' hearing procedures. The ''fast track'' procedures of subpart N may be particularly useful for reactor operator licensing cases or for small material licensee cases where the parties want to be heard on the issues in a simple, inexpensive, informal proceeding that can be conducted quickly before an independent decisionmaker. The Commission requests comments and suggestions on the appropriate criteria for the use of subpart N.

(e) *Section 2.311—Interlocutory Review of Rulings on Requests for Hearing/Petitions to Intervene and Selection of Hearing Procedures.*

Proposed § 2.311 continues unchanged the provision in § 2.714a that limits interlocutory appeal of rulings on requests for hearing and petitions to intervene to those that partly or completely grant or deny a petition to intervene.

(f) *Section 2.314—Appearance and representation.*

Proposed § 2.314 simplifies and expands the existing provisions in §§ 2.713 and 2.1215 on appearance and representation in NRC adjudications.

(g) *Section 2.317—Separate hearings; consolidation of proceedings.*

Proposed § 2.317 expands upon the general concept in existing § 2.761a that separate hearings may be appropriate in certain instances. In addition, this section incorporates without change the provisions for consolidation of proceedings currently in § 2.716.

(h) *Section 2.318—Commencement and termination of jurisdiction of presiding officer.*

Proposed § 2.318 continues without change the existing provisions in § 2.717 with respect to the commencement and termination of the jurisdiction of a presiding officer. A conforming change is made to § 2.107, ''Withdrawal of application'' to clarify that the presiding officer should dismiss a proceeding when an application has been withdrawn before a notice of hearing has been issued.

(i) *Section 2.323—Motions.*

Proposed § 2.323 incorporates the substance of existing § 2.730 in subpart G on the general form, content, timing, and requirements for motions and responses to motions. The Commission requests public comment on whether § 2.323(a) should be more specific with respect to the time limit for filing all motions by specifying a time limit of ten (10) days for filing of motions, beginning from the action or circumstance that engenders the motion. The proposed § 2.323(e) also departs from existing § 2.730 by establishing a standard for evaluating motions for reconsideration—viz., compelling circumstances, such as ''existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid'' (this standard is also reflected in proposed § 2.344(b)). The Commission requests public comment on whether this ''compelling circumstances'' standard in the proposed standard should be adopted or eliminated from the final rule. Proposed § 2.323 also addresses referral of rulings and certified questions by the presiding officer to the Commission. With regard to referrals, proposed § 2.323(f) has been expanded to provide for referrals of decisions or rulings where the presiding officer determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity. The proposed section also differs from the existing requirements by allowing any party to file with the presiding officer a petition for certification of issues for early Commission review and guidance. This is consistent with the Commission's direction in the 1998 Statement of Policy on Adjudicatory Proceedings that issues or rulings involving novel questions which would benefit from early Commission guidance be certified to the Commission.

(j) *Section 2.332—General Case Scheduling and Management.*

Proposed § 2.332 addresses general case scheduling and management. It would require a presiding officer to consult with the parties early in the proceeding in order to set schedules, establish deadlines for discovery and motions, where appropriate, and set the groundrules for the control and management of the proceeding. The section also addresses integration of the NRC staff's preparation of its safety and environmental review documents into the hearing process schedules. The Commission requests comment on the case management provisions proposed in § 2.332 and welcomes suggestions for additional case management techniques.

(k) *Section 2.334—Schedules for Proceedings.*

Proposed § 2.334 codifies the guidance in the Commission's 1998 Statement of Policy on the Conduct of Adjudicatory Proceedings that suggested that presiding officers should establish and maintain ''milestone'' schedules for the completion of hearings and the issuance of initial decisions. The section requires a presiding officer to establish a hearing schedule, and to notify the Commission if there are slippages that would delay the issuance of the initial decision more than 60 days from the date established in the schedule. The notification must include an explanation of the reasons for the delay and a description of the actions, if any, that can be taken to avoid or mitigate the delay.

(l) *Section 2.336—General Discovery.*

Proposed § 2.336 would impose a disclosure requirement on all parties (and the NRC staff) in all proceedings under Part 2, except for proceedings using the procedures of Subparts G and J. The discovery required by § 2.336 constitutes the totality of the discovery that may be obtained. This generally applicable discovery provision requires each party to disclose and/or provide the identity of witnesses and persons with discoverable information, pertinent documents, and pertinent applicant-NRC correspondence. The duty of disclosure continues over the pendency of the proceeding. Section 2.336 also authorizes the presiding officer to impose sanctions against parties who fail to comply with this general discovery provision, including prohibiting the admission into evidence of documents or testimony that a party failed to disclose as required by this section unless there was good cause for the failure (this sanction is similar to that provided in the rules of practice of the Environmental Protection Agency, 40 CFR 22.19(a), 22.22(a)).

(m) *Section 2.337—Settlement of Issues; Alternate Dispute Resolution.*

Proposed § 2.337 addresses settlement and use of alternate dispute resolution in NRC proceedings. The Commission has long encouraged the resolution of contested issues in licensing and enforcement proceedings through settlement, consistent with the hearing requirements of the Atomic Energy Act. See Statement of Policy on Conduct of Licensing Proceedings, CLI–81–8, 13 NRC 452 (45 FR 28533; May 27, 1981);

Policy Statement on Alternative Means of Dispute Resolution (57 FR 36678; Aug. 14, 1992). The proposed rule includes a new provision on settlement that consolidates and amplifies existing rules pertaining to settlement (10 CFR 2.203, 2.,759, 2.1241). The proposed rule describes the required form and content of settlement agreements and provides guidance on the use of settlement judges as mediators in NRC proceedings. The Commission has previously endorsed the appropriate use of settlement judges in Rockwell Int'l Corp., CLI–90–05, 31 NRC 337 (1990). The proposed rule is modeled on a provision in the Model Adjudication Rules prepared in 1993 for the Administrative Conference of the United States (ACUS). See Cox, The Model Adjudication Rules, 11 T.M. Cooley L. Rev. 75 (1994). The Commission intends no change in the bases for accepting a settlement by the proposed rule.

As suggested by several workshop participants, the Commission is also considering providing further guidance on the use of alternative dispute resolution (ADR) as part of its hearing procedures. This objective is also consistent with the NRC's continuing participation in the activities of the Interagency Working Group on Alternative Dispute Resolution chaired by the Attorney General, as well as with the Administrative Dispute Resolution Act of 1996 (ADR Act). The Working Group was established to facilitate the implementation of a May 1, 1998, memorandum from President Clinton that directed all executive departments and Federal agencies to develop dispute resolution programs.

ADR can be defined as any technique that results in the conciliatory resolution of a dispute, including facilitation, mediation, fact finding, minitrials, early neutral evaluation, and arbitration. Although ''unassisted'' negotiation to resolve disputes has long been effectively used in resolving disputed matters before NRC tribunals, the focus of the ADR Act, and the efforts of the Interagency Working Group, has been on ''formal'' ADR techniques that require the use of a third party neutral. The Commission's consideration of ADR techniques for use in the hearing process also focuses on these formal ADR techniques. Although the Commission believes that a broad array of ADR options could be made available to the parties in an NRC proceeding, it anticipates that ''non-binding'' techniques, such as mediation, would be the most appropriate. For example, mediation is a process by which an impartial third party—a mediator—facilitates the resolution of a dispute by promoting a voluntary agreement by the parties to the dispute. The parties are free to develop a mutually acceptable resolution to their dispute. The role of the mediator is to help the parties reach this resolution. The mediator does not decide the case or dictate the terms of a settlement.

The Commission believes that the use of ADR has the potential to eliminate unnecessary litigation of licensing issues, shorten the time that it takes to resolve disputes over issues, and achieve better resolution of issues with the expenditure of fewer resources. However, because of the Commission's responsibility to make required public health and safety findings, the use of ADR may not be appropriate in all circumstances.

The Commission seeks public comment on the text of the proposed rule as well as on the broader issue of the use of ADR in NRC proceedings. In this regard the Commission invites comment on the following specific questions:

- Should the Commission formally provide for the use of ADR in its hearing process?
- Should the use of ADR be codified in the Commission's regulations or provided for in some other manner, such as a policy statement?
- At what stage of the hearing process should an opportunity for ADR be provided?
- What types of issues would be amenable to resolution through ADR? What types of issues should not be considered for resolution through ADR?
- How should the use of ADR operate in the context of the hearing process? Who could propose its use? What should be the role of the presiding officer? Who should be parties to the ADR process? What should be the role of the NRC staff in the ADR process? What happens to the proceeding while the ADR process is being implemented? How would the resolution of a dispute be incorporated into the hearing process? What should the role of the Commission be in the ADR process?
- Should there be a source of third-party neutrals other than settlement judges appointed from the members of the Atomic Safety and Licensing Board Panel to assist in the ADR process, such as the roster of neutrals established by the U.S. Institute for Conflict Resolution or the National Energy Panel of the American Arbitration Association? How should such individual neutrals be selected? What arrangements should be made to compensate neutrals for their services?

(n) *Section 2.340—Review of Decisions and Actions of a Presiding Officer.*

The proposed § 2.340 on Commission review of decisions and actions of the presiding officer is, in essence, a restatement of existing § 2.786. However, paragraph (f) makes clear what has been in fact practice since adoption of the current appellate procedures in 1991; i.e., the Commission will entertain in its discretion petitions by a party for review of an interlocutory matter in the circumstances described in paragraph (f). Minor changes would also be made to give guidance on the form and content of briefs, e.g., the proposed rule would increase the number of pages permitted for a petition for review of a decision of a presiding officer, and any replies to the petition, from the current limit of ten (10) pages to twenty-five (25) pages.

(o) *Section 2.344—Petition for Reconsideration.*

Proposed § 2.344 contains largely unchanged the provisions in existing § 2.771, but would no longer provide the NRC staff with two additional days to file a reply brief; the NRC staff would be treated as any other party and have ten (10) days to file a reply brief to a petition for reconsideration.

(2) Subpart G—Sections 2.700–2.712

The Commission proposes to revise Subpart G, which currently sets forth the rules of general applicability to NRC adjudications and contains the formal adjudicatory procedures. Under the proposed revisions, Subpart G would set forth rules specifically applicable to formal adjudicatory proceedings, such as those appropriate to enforcement proceedings and to more complex reactor proceedings involving numerous issues. In large part, the existing provisions in the rules of general applicability have been restated in Subpart G without change except for renumbering and internal conforming reference renumbering. Some provisions have been amended to better reflect current Commission policy regarding the conduct of adjudicatory proceedings and current Federal practice, for example, with respect to discovery. As discussed above, numerous provisions of current subpart G would be relocated to the new Subpart C. In addition, several provisions have been removed. Following is a section-by-section analysis:

(a) The proposed § 2.700 would reflect the revised description of the applicability of this Subpart to a limited set of proceedings; the Commission requests public comment on whether

the set of proceedings for which formal hearings under this Subpart would be afforded (see above in I.E. Summary and General Questions, and II.A Overview) should be modified. In particular, the Commission requests public comment on whether subpart G should be used in all initial power reactor construction permit and operating license proceedings rather than in reactor licensing proceedings involving a ''large number'' of ''complex issues.'' Section 2.700a continues, without change, the possible exceptions to the applicability of the procedures to be considered by the Commission.

(b) The current § 2.705, which provides for the filing of an answer to a notice of hearing, would be removed. Experience has shown this provision to be largely superfluous. For the same reason, § 2.751a, which provides for a special prehearing conference in connection with construction permit and operating license proceedings, and § 2.761a, which provides for separate hearings and decisions, would be removed. The provisions of § 2.752, which would be redesignated as § 2.318, provide for the conduct of a prehearing conference to accomplish the same purposes as those in § 2.751a. Therefore, there is no apparent reason to retain a duplicative requirement in § 2.751a.

(c) The existing provisions of § 2.765, immediate effectiveness of initial decision directing issuance or amendment of a license under Part 61 of this chapter, would be relocated to the revised Subpart L, which sets forth the provisions applicable to informal proceedings. The Commission is proposing to conduct proceedings regarding licensing matters under part 61 in accordance with subpart L. For that reason, this provision is pertinent to those provisions as opposed to those applicable to formal proceedings.

(d) Section 2.790 in the current rule would be redesignated in proposed subpart C as § 2.390. This regulation sets forth provisions of generic applicability concerning the public's access to information which apply irrespective of whether there is an NRC proceeding.

(e) Proposed § 2.702 is fundamentally a restatement of former § 2.720(a)—(h)(1). The provisions of former § 2.720(h)(2), which pertain to discovery against the NRC, has been retained and combined with former § 2.744 in a new § 2.709. This new section now sets forth in one place, all regulations governing discovery against the NRC in the Commission's formal administrative proceedings under Subpart G. The need for formal discovery against the NRC staff should be minimal, in view of the Commission's general policy of making all available documents public (see, e.g., 10 CFR 9.15), subject only to limited restrictions (e.g., those needed to protect enforcement, proprietary information, etc. under 10 CFR 9.17). Except for the foregoing, the substantive aspects of the former regulations are unchanged.

(f) The proposed § 2.703 would restate, without revision, § 2.733 regarding the examination and cross-examination of expert witnesses.

(g) The Commission proposes new §§ 2.704 and 2.705 that would revise the general provisions for discovery, except for discovery against the NRC. The new regulations would revise the existing provisions of § 2.740 to better reflect the provisions of Rule 26 of the Federal Rules of Civil Procedure, providing for the prompt and open disclosure of relevant information by the parties, without resort to formal processes, except if the need for intercession by the Presiding officer becomes necessary. Section 2.704 sets forth the disclosures that all parties must make to other parties; a party need not file a request for the information required to be disclosed under § 2.704. Section 2.705 sets forth the additional methods of discovery that are permitted. It is expected that the new regulations would eliminate or substantially limit the need for formal discovery in adjudicatory proceedings, and at the same time, make explicit the presiding officer's authority to limit the scope and quantity of discovery in a particular proceeding, should the need arise. Proposed §§ 2.706, 2.707 and 2.708 would continue without change, the provisions of current §§ 2.740a, 2.740b, 2.741 and 2.742, regarding depositions, interrogatories, production of documents, and admissions.

(h) Section 2.709 would incorporate the formerly separate provisions of §§ 2.720(h)(2) and 2.744 providing for discovery against the NRC staff .

(i) Section 2.710 would generally retain the current provisions of § 2.749 regarding summary disposition. The proposed rule would expand the presiding officer's discretion not to consider a motion for summary disposition by providing that the presiding officer need not consider the summary disposition motion unless he or she determines that resolution of the motion will serve to expedite the proceeding. Alternatively, the Commission could adopt a standard whereby the presiding officer need not consider a summary disposition motion unless the motion would ''substantially reduce the number of issues to be decided or otherwise expedite the proceeding.'' The Commission requests public comment on whether the revised standard for consideration of summary disposition motions in the proposed rule should be adopted, or whether the alternate standard set forth above should instead be adopted.

(j) The proposed § 2.711 would restate the requirements in current § 2.743 without change.

(k) The proposed § 2.712 would continue, without change, the provisions of § 2.754 regarding the requirement for the submission of proposed findings of fact and conclusions of law following completion of a formal hearing.

(l) The proposed § 2.713 would restate the requirements in current § 2.760, ''Initial decision and its effect,'' without change.

(3) Subpart J

The Commission proposes a number of changes to §§ 2.1000, 2.1001, 2.1010, 2.1012, 2.1013, 2.1014, 2.1015, 2.1016, 2.1018, 2.1019, 2.1021, and 2.1023. The changes are intended: (i) As conforming changes to correct references to rules of general applicability in existing subpart G that are being transferred to the proposed subpart C, and (ii) to eliminate redundant or duplicate provisions in Subpart J that would be covered by the generally applicable provisions in the proposed subpart C. The Commission requests comments or suggestions on these or other changes to subpart J that would serve these intents.

(4) Subpart K

The Commission proposes several simple changes to §§ 2.1109 and 2.1117. In addition, § 2.1111 on discovery would be removed because discovery for subpart K hybrid hearings will be addressed by the general discovery provisions of subpart C. These proposed changes are intended: (1) To conform subpart K to the rules of general applicability of subpart C, particularly with regard to the need to request hybrid hearing procedures in the petition to intervene, and (2) to make it clear that a hearing on any contentions that remain after the oral argument under subpart K will be conducted using the informal hearing procedures of proposed subpart L.

(5) Subpart L—Sections 2.1200–2.1212

Although the informal hearing procedures of existing subpart L have been in place for a number of years, their implementation has shown that some aspects are cumbersome and inefficient in the development of a record. Under the existing subpart L, the parties sometimes devote substantial time and effort to litigation over the specific procedures to be used rather

than to the substantive issues. In addition, the absence of a specific contention requirement has sometimes resulted in the development of a paper record that is not effectively focused on the issues in dispute but rather, is burdened with extraneous material that makes the formulation of a decision unnecessarily difficult and time consuming. To address these problems, the Commission proposes to replace the existing subpart L in its entirety. The provisions of this new subpart L may be applied to 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 proceedings on the licensing of the construction and operation of a uranium enrichment facility. The proposed new informal hearing procedures would be patterned after the existing subpart M provisions on license transfers and would shift the focus to informal oral hearings (e.g., record developed through oral presentation of witnesses who are subject to questioning by the presiding officer to the extent necessary to ensure a complete record for decisionmaking), although all parties could agree to conduct the hearing based solely upon written submissions. In addition, a specific contention requirement would apply through subpart C; the Commission is proposing this requirement primarily to help focus the informal oral hearings—although such a requirement would also serve to focus hearings conducted solely on written submissions. The Commission requests public comment on the advantages and disadvantages of shifting the focus of subpart L to informal oral hearings, including the proposed requirement for submission of contentions, and the opportunity to pose questions indirectly to witnesses by proffering proposed questions to the presiding officer. The Commission is also considering whether the proposed rule should be further modified to provide explicitly for the option of the Commission or the Chief Administrative Judge to establish three-judge panels on a case-by-case basis, for example in cases where there are likely to be both significant technical matters as well as significant legal issues to be resolved in the hearing. Three-judge panels would be available as an option in oral hearings as well as hearings based solely upon written submissions. The Commission requests public comment on the desirability of appointing three-judge panels in informal hearings under subpart L, and the circumstances in which appointment of such panels would be useful.

Following is a section-by-section analysis of proposed subpart L:

(a) *Section 2.1200—Scope of Subpart.*

The proposed § 2.1200 would indicate that subpart L may be applied to all NRC adjudicatory proceedings except proceedings on the licensing of uranium enrichment facilities, proceedings on applications for a license to construct a high-level radioactive waste repository noticed under §§ 2.101(f)(8) or 2.105(a)(5), and proceedings on applications for a license to receive and possess high-level radioactive waste repository.

(b) *Section 2.1201—Definitions.*

The proposed § 2.1201 would indicate that subpart L has no unique definitions but relies on the definitions in existing § 2.4.

(c) *Section 2.1202—Authority and Role of NRC Staff.*

The proposed § 2.1202 would describe the authority and role of the NRC staff in the informal hearings under proposed subpart L. Similar to the situation in license transfer cases under existing subpart M, the NRC staff would be expected to conduct its own reviews and take action on the application or matter that is the subject of the hearing, despite the pendency of the hearing. The NRC staff's action on the application or matter would be effective upon issuance except in matters involving an application to construct or operate a production or utilization facility, an application for for amendment to a construction authorization for a HLW repository, an application for the construction and operation of an independent spent fuel storage installation or monitored retrievable storage facility located away from a reactor site, and production or utilization facility licensing actions that involve significant hazards considerations. Under proposed § 2.1212, the NRC staff's action would be subject to motions for stay.

Proposed § 2.1202 would provide that the NRC staff is not required to be a party to most proceedings conducted under proposed subpart L. Proposed § 2.1202(b)(1)(ii) also requires the NRC staff to participate as a party on specific issues where the presiding officer determines that resolution of such issues would be aided materially by the staff's participation as a party. In all other instances, the NRC staff must notify the Presiding officer and parties as to whether or not it desires party status.

(d) *Section 2.1203—Hearing File and Prohibition on Other Discovery.*

In a manner similar to existing subpart L, proposed § 2.1203 would require the NRC staff to prepare and provide a hearing file and to keep the hearing file up-to-date. In many respects, the Hearing File requirement for the NRC staff overlaps the ''general discovery'' provision of subpart C which is applicable to the staff for all proceedings. Proposed § 2.1203 would generally prohibit any other discovery in Subpart L proceedings.

(e) *Section 2.1204—Motions and Requests.*

The proposed § 2.1204 would make it clear that the provisions in subpart C on motions, requests and responses are to be applied in informal proceedings under subpart L. This section would also allow the parties to request that the presiding officer permit cross-examination by the parties on particular contentions or issues. The presiding officer may allow the parties to cross-examine if he/she finds that the failure to permit cross examination will prevent the development of an adequate record for decision.

(f) *Section 2.1205—Summary Disposition.*

The proposed § 2.1205 would provide a simplified procedure for summary disposition in informal proceedings. The standards to be applied in ruling on such motions are those set out in Subpart G.

(g) *Section 2.1206—Informal Hearings.*

The proposed § 2.1206 would specify that informal hearings under the new subpart L will be oral hearings unless all the parties agree to a hearing consisting of written submissions. This would be a significant change from the existing subpart L which generally involves hearings consisting of written submissions. No motion to hold a hearing consisting of written submissions would be entertained absent unanimous consent of the parties.

(h) *Section 2.1207—Oral Hearings.*

The proposed § 2.1207 would specify the process and schedule for submissions and presentations in oral hearings under the new Subpart L. This section addresses the sequence and timing for the submission of direct testimony, rebuttal testimony, statements of position, suggested questions for the presiding officer to ask witnesses, and post-hearing proposed findings of fact and conclusions of law. The section also contains provisions on the actual conduct of the hearing, including the stipulation that only the presiding officer may question witnesses.

(i) *Section 2.1208—Hearings Consisting of Written Presentation.*

The proposed § 2.1207 would specify the process for submissions in hearings consisting of written presentations. This section addresses the sequence and timing for the submission of written statements of position, written direct testimony, written rebuttal testimony, proposed questions on the written testimony and written concluding statements of position on the contentions.

(j) *Section 2.1209—Findings of Fact and Conclusions of Law.*

The proposed § 2.1209 would require the filing of proposed findings of fact and conclusions of law within 30 days of the close of the hearing, unless the presiding officer specifies a different time.

(k) *Section 2.1210, 2.1211—Initial Decision and Its Effect.*

Currently, unless the Commission directs that the record be certified to it, the presiding officer renders an initial decision and that decision constitutes the final action of the Commission 40 days after issuance, unless any party files a petition for Commission review or the Commission decides to review on its own motion. Under proposed § 2.1210, an initial decision resolving all issues before the presiding officer would be effective upon issuance unless stayed or otherwise provided by the regulations in part 2. The proposed § 2.1211 would restate existing § 2.765, which specifies that initial decisions directing the issuance of a license or license amendment under part 61 relating to land disposal of radioactive waste will become effective only upon the order of the Commission.

(l) *Section 2.1212—Petitions for Commission Review of Initial Decision.*

The proposed § 2.1212 would specify that petitions for review of an initial decision must be filed pursuant to the generally applicable review provisions of § 2.340.

(m) *Section 2.1213—Applications for a Stay.*

The proposed § 2.1213 would specify the procedures for applications to stay the effectiveness of the NRC staff's actions on a licensing matter involved in a hearing under Subpart L. The procedures and standards are similar to the stay provision in existing § 2.788. Applications for a stay of an initial decision issued under Subpart L would be required to be filed under the generally applicable stay provisions of § 2.341.

(6) Subpart M

The Commission proposes changes to Subpart M that would eliminate §§ 2.1306, 2.1307, 2.1308, 2.1312, 2.1313, 2.1314, 2.1317, 2.1318, 2.1326, 2.1328, 2.1329, and 2.1330 because the substance of these sections is covered by rules of general applicability in proposed subpart C. Sections 2.1321, 2.1322 and 2.1331 would be amended to remove references to deleted sections and to reflect the fact that requests for hearing/petitions to intervene for proceedings under subpart M would be considered under the generally applicable requirements of § 2.309. The basic intent of these changes is to conform subpart M to the other changes to part 2 proposed in this rulemaking.

(7) Subpart N—Sections 2.1400—2.1407

The Commission proposes to establish a new subpart N—a ''fast track'' process—to provide a mechanism and procedures for the expeditious resolution of issues in cases where the contentions are few and not particularly complex and might be efficiently addressed in a short hearing using simple procedures and oral presentations. This Subpart may be used for more complex issues if all parties agree. The Subpart may be applied to all NRC adjudications except proceedings on uranium enrichment facility licensing, and proceedings on the initial authorization to construct a HLW geological waste repository, and initial authorization to possess and receive HLW at a HLW geological waste repository. By the shortened response times and fairly rapid progression to actual hearing, subpart N procedures could result in the rendering of an initial decision within about two to three months of the issuance of the order granting a hearing if the issues are straightforward and deadlines are met. In view of the simplified procedures and the expedited nature of the litigation involved, subpart N would allow an appeal as-of-right to the Commission so that the parties have a direct path to the Commission for review of the decision. The ''fast track'' procedures of Subpart N may be particularly useful for small licensee cases where the parties want to be heard on the issues in a simple, inexpensive informal proceeding that can be conducted quickly before an independent decisionmaker. Following is a section-by-section analysis of Subpart N:

(a) *Section 2.1401—Definitions.*

The proposed § 2.1401 would indicate that subpart N has no unique definitions but would rely on the definitions in existing § 2.4.

(b) *Section 2.1402—General Procedures and Limitations.*

The proposed § 2.1402 would specify the general procedures and procedural limitations for the ''fast track'' hearing process of Subpart N. It is notable in its general limitations on the use of written motions and pleadings, the prohibitions on discovery beyond that provided by the general disclosure provisions of subpart C, and the prohibition on summary disposition. Section 2.1402 would allow the presiding officer or the Commission to order that the hearing be conducted using other hearing procedures if it becomes apparent before the hearing is held that the use of the ''fast track'' procedures of this Subpart is not appropriate in the particular case. It would also permit any party to request that the presiding officer allow parties to cross-examine on particular contentions or issues if the party can show that a failure to allow cross-examination by the parties would prevent the development of an adequate record for decision.

(c) *Section 2.1403—Authority and Role of the NRC Staff.*

The proposed § 2.1403 describes the authority and role of the NRC staff in the ''fast track'' hearings under subpart N. Similar to the situation in informal hearings under proposed subpart L and license transfer cases under existing subpart M, the NRC staff is expected to conduct its own reviews and take action on the application or matter that is the subject of the hearing, despite the pendency of the hearing. The NRC staff's action on the application or matter is effective upon issuance except in proceedings involving an application to construct and/or operate a production or utilization facility, an application for the construction and operation of an ISFSI or an MRS at a site other than a reactor site, and proposed reactor licensing actions that involve significant hazards considerations. Section 2.1403 would provide that the NRC staff is not required to be a party in most ''fast track'' proceedings. The NRC staff would be required to be a party in any subpart N proceeding involving an application denied by the NRC staff or an enforcement action proposed by the staff or where the presiding officer determines that resolution of any issue would be aided materially by the staff's participation as a party. In all other instances, the NRC staff would be required to notify the presiding officer and the parties as to whether or not it desires party status.

(d) *Section 2.1404—Prehearing Conference.*

The proposed § 2.1404 would require the presiding officer to conduct a prehearing conference within 40 days of the issuance of the order granting

requests for hearing/petitions to intervene. At the prehearing conference, each party would identify its witnesses, provide a summary of the proposed testimony of each witness, report on its efforts at settlement, and provide questions that the party wishes the presiding officer to ask at the hearing. The presiding officer would memorialize the rulings and results of the prehearing conference in a written order.

(e) *Section 2.1405—Hearing.*

The proposed § 2.1405 describes the requirements applicable to ''fast track'' hearings. The hearing would commence no later than 20 days after the prehearing conference required by § 2.1404. The hearing would be open to the public and transcribed. At the hearing, the presiding officer would receive oral testimony and question the witnesses. The parties may not cross-examine the witnesses, but they would have had the opportunity at the prehearing conference to provide questions for the presiding officer to use at hearing. 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 would be prohibited unless requested by the presiding officer.

(f) *Section 2.1406—Initial Decision—Issuance and Effectiveness.*

The proposed § 2.1406 would encourage the presiding officer to render a decision from the bench, to be reduced to writing within 20 days of the close of the hearing. Where a decision is not rendered from the bench, it must be issued in writing within 30 days of the close of the hearing. These periods would be extended only with the approval of the Chief Administrative Judge or the Commission. The initial decision would be effective 20 days after issuance of the written decision unless a party appeals or the Commission takes review on its own motion. Under the proposed ''fast track'' process, the initial decision is effectively stayed if a party appeals or the Commission reviews on its own.

(g) *Section 2.1407—Appeal and Commission Review of Initial Decision.*

Under proposed § 2.1407, a party may appeal as-of-right by filing a written appeal with the Commission within 15 days after the service of the initial decision. The written appeal would be limited to 20 pages and must address the matters and standards for review listed in section 2.1407. Other parties may file written answers within 15 days after service of the appeal. Answers are also limited to 20 pages.

III. Plain Language

The Presidential memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made to these proposed provisions to improve the organization and readability of the existing language of the provisions being revised. The NRC requests comments on the proposed rule specifically with respect to the clarity and reflectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary, private sector, consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC proposes to approve changes to its procedures for the conduct of hearing in 10 CFR part 2. This proposed rule does not constitute the establishment of a government-unique standard as defined in Office of Management and Budget (OMB) Circular A–119 (1998).

V. Environmental Impact: Categorical Exclusion

The proposed rule involves an amendment to 10 CFR part 2, and qualifies as an action eligible for the categorical exclusion from environmental review in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement or environmental assessment has been prepared for this rulemaking.

VI. Paperwork Reduction Act Statement

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

VII. Regulatory Analysis

The proposed rule emanates from a longstanding concern that the Commission's hearing process is not as efficient or effective as it could be. The Commission is seeking to develop revised rules of procedure that will enhance public participation, produce more timely decisions, and reduce the resources that participants expend. The Commission's experience suggests that, in most instances, the use of formal adjudicatory procedures is not essential to the development of an adequate hearing record. However, their use all too frequently results in protracted, costly proceedings.

The Commission proposes that most NRC proceedings be conducted using informal hearing procedures. The trend in administrative law is to move away from formal, trial-type procedures. Instead, informal hearings and use of Alternative Dispute Resolution methods, such as settlement conferences, are often viewed as a better, quicker, and less costly means to resolve disputes.

The Commission would continue to use formal trial-type procedures in enforcement proceedings, in proceedings on the initial construction authorization and initial licensing of a high-level radioactive waste repository, as well as any proceeding to construct and operate an enrichment facility under section 193 of the Atomic Energy Act of 1954, as amended (AEA). The Commission also proposes to retain the option of using formal adjudicatory proceedings in other proceedings where it determines that this would be the better means to address and resolve particular issues. The Commission recognizes that in some cases, such as reactor licensing cases involving many complex issues, the use of formal adjudicatory proceedings may be the best means to develop an adequate record upon which a sound decision can be based.

The proposed changes in the rules should facilitate public participation in NRC proceedings by reducing some of the burdens. For example, the costs of discovery in formal adjudications should be reduced by the provision requiring parties to disclose voluntarily relevant documents at the outset of the proceeding. This should result in a diminished need for parties to file interrogatories and take depositions. By adding this form of discovery to all proceedings (formal and informal), the parties would have information that will assist in the resolution of issues and litigation of the case. Moreover, by requiring that contentions be filed in informal adjudications and providing for oral hearings (unless waived by all of the parties), informal proceedings should be more focused. This would permit parties to better focus the scope of their written and oral presentations on the specific disputes that must be resolved. By permitting the parties in informal hearings to propose questions that the presiding officer could pose to the participants, and then permitting the presiding officer to pose whatever

questions he or she deems appropriate to the witnesses, a more focused and complete record should be developed.

Finally, for less complex disputes, a fast track option is proposed. Under this option, these cases could be resolved far more quickly than under current rules and with substantially reduced burdens to the participants.

The Commission does not believe the option of preserving the status quo by not proposing any rule changes is a preferred option. Experience has indicated that the agency hearing process can be improved through appropriate rule changes. The Commission believes that the proposed rule would improve the effectiveness of NRC hearings and at the same time reduce the overall burdens for participants—members of the public, interested State and local governments, NRC staff, applicants and licensees—in NRC hearings.

This constitutes the regulatory analysis for the proposed rule.

VIII. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule would apply in the context of Commission adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do fall within the definition of a small business found in section 3 of the Small Business Act, 15 U.S.C. 632, within the small business standards set forth in 13 CFR part 121, or within the size standards adopted by the NRC (10 CFR 2.810). Based upon the historically low number of requests for hearings involving materials licensees, it is not expected that this rule would have any significant economic impact on a substantial number of small businesses.

IX. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required for this proposed rule.

Lists of Subjects

10 CFR Part 1

Organization and function (Government Agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and record keeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 1, 2, 50, 51, 52, 54, 60, 70, 73, 75, 76 and 110.

PART 1—STATEMEMT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.25, paragraph (g) is revised to read as follows:

§ 1.25 Office of the Secretary of the Commission.

* * * * *

(g) Receives, processes, and controls motions and pleadings filed with the Commission; issues and serves adjudicatory orders on behalf of the Commission; receives and distributes public comments in rulemaking proceedings; issues proposed and final rules on behalf of the Commission; maintains the official adjudicatory and rulemaking dockets of the Commission; and exercises responsibilities delegated

to the Secretary in 10 CFR 2.303 and 2.345.

* * * * *

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

3. The authority citation for Part 2 is revised to read as follows:

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.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 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(0); 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, 2.321 also issued under secs. 102, 163, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 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. 161 b. i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (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). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712, 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 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). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

4. Section 2.2 is revised to read as follows:

§ 2.2 Subparts.

Each subpart other than subpart C 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 rule making, and should be read in conjunction with the subpart governing a particular proceeding. Subpart I sets forth special procedures to be followed in proceedings in order to safeguard and prevent disclosure of Restricted Data.

5. Section 2.3 is revised to read as follows:

§ 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.

6. In § 2.4, the definitions of Commission adjudicatory employee, and NRC employee are revised to read as follows:

§ 2.4 Definitions.

As used in this part,

* * * * *

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, including an administrative law judge, 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 § 2.347, 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.

* * * * *

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.

* * * * *

7. In § 2.101, paragraphs (a)(3)(ii), (b), and (g)(2) are revised to read as follows:

§ 2.101 Filing of application.

(a) * * *

(3) * * *

(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, and telephone number 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 (a)(3)(ii) 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

* * * * *

(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, and telephone number 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 (b) 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 along with a list of names and addresses of those executives upon whom the notice was served.

* * * * *

(g) * * *

(2) With respect to any tendered document that is acceptable for docketing, the applicant will be requested to submit to the Director of Nuclear Material Safety and Safeguards such additional copies as the regulations in Part 61 and subpart A of part 51 of this chapter require, 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, 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, and 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) of this section to the executives or bodies. All distributed copies shall be completely assembled documents identified by docket number. Subsequently distributed amendments, however, 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 shall not make public distribution of those parts of the application subject to § 2.390(d).

* * * * *

8. In § 2.102, paragraph (d)(3) is revised to read as follows:

§ 2.102 Administrative review of application.

* * * * *

(d) * * *

(3) The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will cause the Attorney General's advice received pursuant to paragraph (d)(1) of this section to be published in the **Federal Register** promptly upon receipt, and will make such advice a part of the record in any proceeding on antitrust matters conducted in accordance with subsection 105c(5) and section 189a of the Act. The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will also cause to be published in the **Federal Register** a notice that the Attorney General has not rendered any such advice. Any notice published in the **Federal Register** pursuant to this subparagraph will also include a notice of hearing, if appropriate, or will state that any person whose interest may be affected by the proceeding may, pursuant to and in accordance with § 2.309, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. The notice will state that petitions for leave to intervene and requests for hearing shall be filed within 30 days after publication of the notice.

9. In § 2.107, paragraph (a) is revised to read as follows:

§ 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 presiding officer 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.

* * * * *

10. In § 2.108, paragraph (c) is revised to read as follows:

§ 2.108 Denial of application for failure to supply information.

* * * * *

(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 pursuant to § 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, pursuant to paragraph (a) of this section.

11. In § 2.110, paragraph (a)(1) is revised to read as follows:

§ 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.

* * * * *

12. A new subpart C is added to Part 2 to read as follows:

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

Sec.

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.

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:

(1) By delivery to the NRC Public Document Room at 11555 Rockville Pike, Room O1–F21, Rockville, Maryland; or

(2) By mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or

(3) By facsimile transmission addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC., Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; or

(4) By electronic mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV.

(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 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 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.

§ 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, by first class, certified or registered mail including air mail, by electronic or facsimile transmission (in which case the original signed copy shall be transmitted to the Secretary by personal delivery or by first class, certified or registered mail), or as otherwise authorized by law. 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 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., facsimile or electronic transmission, first class or express mail, personal delivery, or courier, 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.

(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 overnight mail 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.

(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) Express mail: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff.

(iii) E-mail: *SECY@NRC.gov.;* and facsimile: (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 or her 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 or her 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 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 transmission to an addressee was not deliverable, transmission to that person is not considered complete;

(4) By facsimile transmission, on transmission thereof; 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.

§ 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 mail, five (5) days is added to the prescribed period. Only two (2) days is added when a document is served by express mail. No time is added when the notice or paper is served by electronic mail or facsimile transmission if the recipient has the capability to receive electronic mail or facsimile transmissions. If a document is served by electronic transmission or facsimile and is not received by a party before 5 PM in the recipient's time zone on the date of transmission, the recipient's response date is extended by one 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 or Atomic Safety and Licensing Board, as appropriate, 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 § 2.309(e), 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 § 2.309(d) and has proposed at least one admissible contention that meets the requirements of § 2.309(f). In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the high-level waste 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 which a **Federal Register** notice of agency action is published, not later than the latest of:

(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;

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

(iii) Forty-five (45) days from the date of publication of the notice.

(2) In proceedings for which a **Federal Register** notice of agency action is not published, not later than the latest of:

(i) Forty-five (45) days after publication of notice on the NRC Website, *http://www.nrc.gov;* or

(ii) Forty-five (45) days after the requestor receives actual notice of a pending application, but not more than forty-five (45) days after agency action on the application.

(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 these factors 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 and local governments and affected Indian Tribes.

(i) 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 representative designated by the State in which the facility is located as well as a single designated representative of the local governmental body (county, municipality or other subdivision) in which the facility is located and any affected Indian Tribe as defined in Part 60 of this chapter, without requiring a further demonstration of standing.

(ii) The representative of the State or local government or affected Indian Tribe admitted under § 2.315(c) is not required to take a position with respect to any admitted contention. However, the representative will be required to identify those contentions on which it will participate in advance of any hearing held. A representative who wishes to litigate a contention not otherwise admitted in the proceeding must satisfy the requirements of paragraph (f) of this section with respect to that contention.

(iii) In any proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, the Commission shall permit intervention by the State and local governments (counties) in which such an area is located and by any affected Indian Tribe as defined in part 60 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 above, among other things. In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

(e) Discretionary Intervention. 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 standing to intervene as a matter of right under § 2.309(b)(1). Accordingly, in addition to addressing the factors in § 2.309(b)(1), 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 and for each contention—

(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 after the initial filing only with leave of the Presiding officer upon a showing that—

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

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

(iii) The amended contention has been submitted in a timely fashion based on the availability of the subsequent information.

(g) Selection of hearing procedures. A request for hearing and/or petition for leave to intervene must also address the selection of hearing procedures, taking into account the provisions of § 2.310.

(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 withing five (5) days after service of that answer.

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

§ 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) 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.

(b) 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.

(c) Reactor licensing proceedings involving a large number of very complex issues that would demonstrably benefit from the use of formal hearing procedures may be conducted under the procedures of subpart G of this part.

(d) At the request of any party in 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, the proceeding may be conducted under the procedures of subpart K of this part.

(e) Proceedings on an application for authorization to construct 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 application for authorization 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 the license to construct. Amendments to an authorization to construct a high-level radioactive waste repository at a geologic repository operations area, and amendments to an authorization to receive and possess high level waste at a geologic repository operations area may be conducted under the procedures of subpart L or N of this part.

(f) 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 may be conducted under the procedures of subpart M of this part.

(g) Except as determined through the application of paragraphs (a) through (f) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 35, 39, 40, 50, 52, 54, 55, 61, and 70 may be conducted under the procedures of subpart L of this part.

(h) Except as determined through the application of paragraphs (a) through (f) of this section, proceedings for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 35, 39, 40, 50, 52, 54, 55, 61, 70 and 72, and proceedings 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.

§ 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 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 § 2.340(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 hearing procedures may be appealed by any party on the question as to whether the selection of the particular hearing procedures was erroneous.

§ 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.

(a) The Commission may provide in the notice of hearing that 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, shall preside. If the Commission does not so provide, the Chief Administrative Judge will issue an order designating an Atomic Safety and Licensing Board appointed under section 191 of the Atomic Energy Act of 1954, as amended. If the Commission has not provided for the hearing to be conducted by an Atomic Safety and Licensing Board, the Chief Administrative Judge will issue an order designating, as appropriate, either an administrative law judge appointed under 5 U.S.C. 3105, or an administrative judge.

(b) 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.

(c) If a party believes that the 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 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 board member does not disqualify himself, the motion must be referred to the Commission. The Commission will determine the sufficiency of the grounds alleged.

(d) 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.

(e) If a presiding officer or a designated member of an Atomic Safety and Licensing Board is substituted for the one originally designated, 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 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 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 rights 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 § 2.341(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 § 2.341(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 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 representatives of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, a reasonable opportunity to participate in those proceedings and to introduce evidence, interrogate witnesses where cross-examination by the parties is permitted, and advise the Commission without requiring the representative to take a position with respect to the issue. These representatives may also file proposed findings in those proceedings where findings are permitted and petitions for review by the Commission under § 2.340. The presiding officer may require the representatives to indicate with reasonable specificity, in advance of the hearing, the subject matters on which each representative desires to participate.

(d) If a matter is taken up by the Commission under § 2.340 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''. A person who is not a party and desires to file a brief shall submit 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 or her 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 accordance 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 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, the Chief Administrative Judge will designate by order the administrative judge 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 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 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 cumulative, irrelevant, immaterial, or unreliable;

(e) Restrict irrelevant, duplicative, or repetitive 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 his/her 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; and

(p) 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 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 jurisdiction 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 must study the written testimony and sit with the presiding officer to hear the presentation and cross-examination by the parties of all witnesses on the issues of the interrogators' expertise, and 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; or

(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 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.

(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. 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 opposition 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 § 2.340(f) in ruling on the petition for certification. No 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.

(3) The motion must demonstrate that a materially different result would be or would have been likely had 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 subpart G. 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 therefore. 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 permit 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 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.

(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 cross-examination evidence;

(7) The disposition of pending motions;

(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; 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(l), 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 recognized by the presiding officer to govern the conduct of the proceeding.

§ 2.331 Oral argument before presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of the proceeding and the public interest warrant, he or she 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, and take other actions in the proceeding. The scheduling order may also include:

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

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

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

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

(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) 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 such methods as 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 before the publication of the pertinent review document will expedite the hearing.

§ 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 may:

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

(b) Strike argumentative, repetitious, cumulative, or irrelevant evidence;

(c) Take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and

(d) Impose such time limitations on arguments as he or she determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

§ 2.334 Schedules for proceedings.

(a) Unless the Commission directs otherwise in a particular proceeding, the residing officer or the Atomic Safety and Licensing Board assigned to the proceeding shall, based on information and projections provided by the parties and the NRC staff, establish and take appropriate action to maintain a schedule for the completion of the evidentiary record and, as appropriate, the issuance of its initial decision.

(b) The presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding shall provide written notification to the Commission any time during the course of the proceeding when it appears 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 schedule established under § 2.334(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.

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

(a) Except as provided in paragraphs (b), (c), and (d) of this section, any 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 not 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 a copy of the analysis or other authority upon which that person bases his or her opinion;

(2) The name and, if known, the address and telephone number of each person that the party believes is likely to have discoverable information relevant to the admitted contentions;

(3)(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.

(4) All other documents (for which there is no claim of privilege or protected status) that, to the party's knowledge, provide direct support for, or opposition to, the application or other proposed action that is the subject of the proceeding, and

(5) A list of all 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.

(b) 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) which act on the application or proposal that is the subject of the proceeding; and

(5) A list of all 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 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 subpart G discovery provisions 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 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) 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 seek judicial review or otherwise 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 settling and terminating the proceeding. Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.340.

§ 2.338 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.

§ 2.339 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. 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 § 2.340 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.

(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) Atomic Safety and Licensing Boards. Atomic Safety and Licensing Boards 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 Board'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 Licensing Board 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 Licensing Board 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 § 2.341.

(g) Nuclear power reactor operating licenses.

(1) Atomic Safety and Licensing Boards. Atomic Safety and Licensing Boards 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 Board'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 Licensing Board 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 Board decision. However, the Commission may dispense with comments by so advising the parties. An extensive stay will not 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 Licensing Board's decision. The Licensing Board'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 §§ 2.340 or 2.341.

§ 2.340 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 waste geologic 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 section. The filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review.

(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 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 be filed, oral argument be held, or both.

(2) Unless the Commission orders otherwise, any briefs on review may not exceed thirty (30) pages in length, exclusive of pages containing the tables 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 motion for reconsideration will be evaluated against the standard in § 2.323(e) of this section.

(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(l) or a ruling referred or issue certified under § 2.323(f) will be reviewed if it either—

(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) The Commission may, in its discretion, grant interlocutory review at the request of a party if the party demonstrates that interlocutory Commission review is warranted under criteria specified in paragraph (f)(1) of this section, 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.

§ 2.341 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 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.

§ 2.342 Oral arguments.

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

§ 2.343 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.

§ 2.344 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 § 2.340(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.

§ 2.345 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 Commission later then 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 2.340;

(f) Extend the time for the Commission to grant review on its own motion under § 2.340;

(g) Extend time for Commission review on its own motion of a Director's denial under 10 CFR 2.206(c);

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

(i) 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;

(j) 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

(k) Take action on minor procedural matters.

§ 2.346 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 § 2.340, 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.

§ 2.347 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) The communications permitted by paragraph (b)(2) (i) through (iii) of this section may not 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 § 2.340.

(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 § 2.346.

(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 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), and (e) of this section, final NRC records and documents, 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 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

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

(b)(1) A person who proposes that a document or a part be withheld in whole or part from public disclosure on the ground that it contains trade secrets or privileged or confidential commercial or financial information shall submit an application for withholding accompanied by an affidavit that:

(i) Identifies the document or part sought to be withheld and the position of the person making the affidavit; and

(ii) Contains a full statement of the reasons on the basis of which it is claimed that the information should be withheld from public disclosure. The statement must specifically address the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit must 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 must 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 must be submitted at the time of filing the information sought to be withheld. The information sought to be withheld must be incorporated, as far as possible, into a separate paper. The affiant may 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 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 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 performance 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) If a request for withholding under paragraph (b) of this section is denied, the Commission will notify an applicant for withholding of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the

notice, when the document will be available at the NRC Web site, http://www.nrc.gov. If, within the time specified in the notice, the applicant requests withdrawal of the document, the document will not be available at the NRC Web site, http://www.nrc.gov, and will be returned to the applicant: Provided, that information submitted in a rulemaking proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding under paragraph (b) of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.

(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) 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).

13. In § 2.402, paragraph (b) is revised to read as follows:

§ 2.402 Separate hearings on separate issues; consolidation of proceedings.

* * * * *

(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 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.

14. Section 2.405 is revised to read as follows:

§ 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 § 2.340. 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.

15. In § 2.604, paragraphs (b) and (c) are revised to read as follows:

§ 2.604 Notice of hearing on application for early review of site suitability issues.

* * * * *

(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 pursuant to § 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 specific 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(a)(1) through (4) and 2.309(d). The notice will be ruled upon by the Commission or Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene.

* * * * *

16. In § 2.606, paragraph (a) is revised to read as follows:

§ 2.606 Partial decisions on site suitability issues.

(a) The provisions of §§ 2.331, 2.338, 2.339(b), 2.342, 2.712, and 2.713 shall apply to any partial initial decision rendered in accordance with this subpart. Section 2.339(c) shall not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under § 50.10(e) of part 50 of this chapter 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.

* * * * *

17. Subpart G is revised to read as follows:

Subpart G—Rules for Formal Adjudications

Sec.

Subpart G—Rules for Formal Adjudications

§ 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, reactor licensing proceedings involving a large number of very complex issues, proceedings for applications for authorization to construct a high-level radioactive waste at a geologic repository operations area noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings for applications for authorization 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 exaination or cross-examination.

(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 are 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;

(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 § 2.710.

(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 or 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 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, within 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 § 2.710(c), 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 a motion under § 2.704(c), 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 § 2.705 and the number of requests under §§ 2.706 and 2.707. 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 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 shall 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 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 shall 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), 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 upon written interrogatories; interrogatories to parties.

(a) Depositions upon oral examination and upon 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 authorized 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.

(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 (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.[1]

(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 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 § 2.705(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 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, 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 officer 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, 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. 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 § 2.705 (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, without leave of the Commission or the presiding officer. The request must

[1] The sanction specified herein is not stated in the Rule 26 of the Federal Rules (which speaks of financial snactions), but is inserted to emphasize the seriousness with which breaches of the Commission's disclosure and discovery rules should be viewed.

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 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 shall advise the requesting party.

(d) If 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;

(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, 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 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 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 § 2.704 (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. 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. Motions may be filed at any time. 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. 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. In addition, 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 and thereby extend the proceeding.

(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) 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.

§ 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 (b)(2) of this section if so directed by the presiding officer, 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 each 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 may 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) Proceedings involving applications. In any proceeding involving an application, the NRC staff shall offer into evidence any report submitted by the ACRS in the proceeding in compliance with section 182b. 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.

(j) 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.

(k) 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.

§ 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. Proposed 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 § 2.340 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 § 2.344; 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.

18. In § 2.902, paragraph (e) is revised to read as follows:

§ 2.902 Definitions.

* * * * *

(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 pursuant to § 2.315(c).

19. Section 2.1000 is revised to read as follows:

§ 2.1000 Scope of Subpart.

The rules in this subpart, together with the rules in subpart G of this part, govern the procedure for applications 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 applications for authorization to receive and possess high level radioactive waste at a geologic repository operations area. The procedures in this subpart are to be used together with the generally applicable procedures in subpart C of this part, and, as appropriate, the procedures in subpart G of this part.

20. In § 2.1001, the definition, Party, is revised to read as follows

§ 2.1001 Definitions

* * * * *

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 of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 2.309 to the proceeding on 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 applications for authorization to receive and possess high level radioactive waste at a geologic repository operations area under part 60 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.

* * * * *

21. In § 2.1010, paragraph (e) is revised to read as follows:

§ 2.1010 Pre-license application presiding officer.

* * * * *

(e) The Pre-License Application presiding officer possesses all the general powers specified in §§ 2.321(c) and 2.319.

* * * * *

22. In § 2.1012, paragraph (b) is revised to read as follows:

§ 2.1012 Compliance.

* * * * *

(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 high-level waste licensing proceeding under § 2.309 or § 2.315.

(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.

* * * * *

23. In § 2.1013, paragraphs (a)(1) and (b) are revised to read as follows:

§ 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 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 applications to receive and possess high level radioactive waste at a geologic repository operations area under part 60 of this chapter.

(2) * * *

(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 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.

* * * * *

§ 2.1014 [Removed]

24. Section 20.1014 is removed.

25. In § 2.1015, paragraphs (b) and (d) are revised to read as follows:

§ 2.1015 Appeals.

* * * * *

(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.

* * * * *

(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.

* * * * *

§ 2.1016 Motions. [Removed]

26. Section 2.1016 is removed.

27. In § 2.1018, paragraphs (c), (f)(3) and (g) are revised to read as follows:

§ 2.1018 Discovery.

* * * * *

(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 protect 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.

* * * * *

(f) * * *

(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 pursuant to § 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.

§ 2.1019 Depositions. [Amended]

28. In § 2.1019, paragraph (j) is removed.

29. Section 2.1021 is revised to read as follows:

§ 2.1021 First prehearing conference.

In any proceeding involving an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under part 60 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, for a conference as provided by § 2.329.

30. In § 2.1023, the introductory test of paragraph (a) and paragraph (a)(1) are revised to read as follows:

§ 2.1023 Immediate effectiveness.

(a) Pending review and final decision by the Commission, an 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 § 60.31 of this chapter, or an authorization to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to § 60.41 of this chapter, will be immediately effective upon issuance except—

(1) As provided in any order issued in accordance with § 2.341 of this part that stays the effectiveness of an initial decision; or

* * * * *

31. In § 2.1109, paragraphs (a)(1) and (c) are revised to read as follows:

§ 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.

* * * * *

(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.

* * * * *

§ 2.1111 [Reserved]

32. Section 2.1111 is removed.

33. Section 2.1117 is revised to read as follows:

§ 2.1117 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.

34. Subpart L is revised to read as follows:

Subpart L—Informal Hearing Procedures for NRC Adjudications

Sec.

Subpart L—Informal Hearing Procedures for NRC Adjudications

§ 2.1200 Scope of subpart.

The provisions of this subpart may be applied to 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 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 authority to receive and possess high-level radioactive waste at a geologic repository operations area, and proceedings on enforcement matters.

§ 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 matter which is the subject of the hearing. Notice of the NRC staff's action must be promptly transmitted to the presiding officer and the parties to the proceeding. 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 at a geologic repository operations area falling under 10 CFR 60.32(c)(1);

(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 significant 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;

(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 NRC 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 specifically identifying the issue(s) on which the NRC staff is to participate as well as setting forth the basis for the determination that NRC staff's 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 provide notice to the presiding officer and the parties on whether or not it desires to participate as a party, and identifying any contentions on which it wishes to participate as a party. Once the NRC staff chooses to participate as a party, it must be considered a party with all the rights and responsibilities of a party with respect to the admitted contentions of other parties which it identifies.

§ 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. 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 presiding officer may allow cross-examination by the parties 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, 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. These questions 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.

(ii) Proposed questions directed to rebuttal testimony for the presiding officer to consider for propounding to persons sponsoring the testimony. These questions must be filed within seven (7) days of the service of the rebuttal testimony unless the presiding officer directs otherwise.

(iii) Questions submitted under paragraphs (a)(3)(i) and (ii) of this section may be propounded at the discretion of the presiding officer.

(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 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., an 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.

§ 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) Proposed written questions directed to the written responses and rebuttal testimony submitted under paragraph (a)(2) of this section for the presiding officer to consider for submittal to the persons offering the written responses and rebuttal testimony. 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.

(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 a 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 forty (40) days after the date of issuance, unless any party files a petition for Commission review in accordance with § 2.1210 or 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) The appropriate ruling, order, or grant or denial of relief with its effective date; and

(3) 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., § 2.312) or by the Commission in special circumstances.

§ 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 subpart in accordance with the procedures set out in § 2.340. A petition for review must be filed for a party to exhaust its administrative remedies before seeking judicial review.

§ 2.1213 Applications 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 5 days of the issuance of the notice of 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 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 § 2.341.

35. The heading for Subpart M is revised to read as follows:

Subpart M—Procedures for Hearings on License Transfer Applications

§ 2.1306 [Removed]

36. Section 2.1306 is removed.

§ 2.1307 [Removed]

37. Section 1307 is removed.

§ 2.1308 [Removed]

38. Section 2.1308 is removed.

§ 2.1312 [Removed]

39. Section 2.1312 is removed.

§ 2.1313 [Removed]

40. Section 2.1313 is removed.

§ 2.1314 [Removed]

41. Section 2.1314 is removed.

§ 2.1317 [Removed]

42. Section 2.1317 is removed.

§ 2.1318 [Removed]

43. Section 2.1318 is removed.

44. In § 2.1321, the introductory paragraph is republished and paragraph (a) is revised to read as follows:

§ 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.

* * * * *

45. In § 2.1322, the introductory text of paragraph (a) is republished, and paragraph (a)(1) is revised to read as follows:

§ 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.

* * * * *

§ 2.1326 [Removed]

46. Section 2.1326 is removed.

§ 2.1328 [Removed]

47. Section 2.1328 is removed.

§ 2.1329 [Removed]

48. Section 2.1329 is removed.

§ 2.1330 [Removed]

49. Section 2.1330 is removed.

50. In § 2.1331, paragraph (b) is revised to read as follows:

§ 2.1331 Commission Action.

* * * * *

(b) The decision on issues designated for hearing under § 2.309 will be based on the record developed at hearing.

51. A new Subpart N is added to read as follows:

Subpart N—Expedited Proceedings with Oral Hearings

Sec.

Subpart N—Expedited Proceedings with Oral Hearings

§ 2.1400 Purpose and scope.

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 may be applied to 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—

(a) Proceedings on the licensing of the construction and operation of a uranium enrichment facility; and

(b) 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), and for an initial application for authorization to receive and possess high level radioactive waste at a geologic repository operations area under part 60 of this Chapter.

§ 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, requests for discovery will not be entertained.

(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.

§ 2.1403 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 matter which is the subject of the hearing. Notice of the NRC staff's action must be promptly transmitted to the presiding officer and the parties to the proceeding. 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;

(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) If the NRC staff desires to participate as a party, the staff shall notify the presiding officer and the parties no later than the time of the prehearing conference provided by § 2.1404. After the appropriate notification, the NRC staff is a party with all the rights and responsibilities of a party.

§ 2.1404 Prehearing conference.

(a) No later than 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 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 receive oral evidence that is not 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.

(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. The filing of an appeal with the Commission is mandatory for a party to exhaust its administrative remedies before seeking judicial review.

(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.

52. Appendix D to 10 CFR part 2 is revised to read as follows:

APPENDIX D TO PART 2.—SCHEDULE FOR THE PROCEEDING ON APPLICATION FOR A LICENSE TO RECEIVE AND POSSESS HIGH-LEVEL RADIOACTIVE WASTE AT A GEOLOGICAL REPOSITORY OPERATIONS AREA

Day	Regulation (10 CFR)	Action
0	2.101(f)(8), 2.105(a)(5)	FEDERAL REGISTER Notice of Hearing.
30	2.1014(a)(1)	Petition to intervene/request for w/contentions.
	2.309(h)	Petition for status as interested government participant.
55	2.309(i)(1)	Answers to intervention & interested government participant petitions.
60	2.309(i)(2)	Petitioner's response to answers.
70		Prehearing Conference.
100	2.1021, 2.329	Prehearing Conference Order; identifies participants in proceeding, admits cotentions, sets discovery and other schedules.
110	2.1015(b)	Appeals from Prehearing Conference Order.
120	2.1015(b)	Briefs in opposition to appeals.
150		Commission ruling on appeals from Prehearing Conference Order.

APPENDIX D TO PART 2.—SCHEDULE FOR THE PROCEEDING ON APPLICATION FOR A LICENSE TO RECEIVE AND POSSESS HIGH-LEVEL RADIOACTIVE WASTE AT A GEOLOGICAL REPOSITORY OPERATIONS AREA—Continued

Day	Regulation (10 CFR)	Action
548		Staff issues SER.
578		Preheairng conference.
608		Prehearing Conference order finalizes issues for hearing and sets schedule for prefiled testimony and hearing.
618	2.1015(b)	Appeals from Prehearing Conference Order.
628	2.1015(b)	Briefs in opposition to appeals.
658		Commission ruling on appeals from Prehearing Conference Order.
660		Last practical date for summary disposition motions.
680		Replies to last practical summary disposition motions.
690		Discovery complete.
720		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	2.341(a), 2.344(a), 2.1015(c)(1)	Stay motion, petition for reconsideration, notice of appeal.
975	2.341(d), 2.344(b),	Other parties' response to stay motion, petition for reconsideration.
995		Commission ruling on stay motion.
985	2.1015(c)(2)	Appellant's briefs.
1015	2.1015(c)(3)	Appellees' briefs.
1125		Commission decision.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

53. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR 1995 Comp., p. 391. Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

54. In § 50.57, paragraph (c) is revised to read as follows:

§ 50.57 Issuance of operating license.

* * * * *

(c) An applicant may, in a case where a hearing is held in connection with a pending proceeding under this section make a motion in writing, under this paragraph (c), for an operating license authorizing low-power testing (operation at not more than 1 percent of full power for the purpose of testing the facility), and further operations short of full power operation. Action on such a motion by the presiding officer shall be taken with due regard to the rights of the parties to the proceedings, including the right of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Before taking any action on such a motion that any party opposes, the presiding officer shall make findings on the matters specified in paragraph (a) of this section as to which there is a controversy, in the form of an initial decision with respect to the contested activity sought to be authorized. The Director of Nuclear Reactor Regulation will make findings on all other matters specified in paragraph (a) of this section. If no party opposes the motion, the presiding officer will issue an order under § 2.323 of this chapter, authorizing the Director of Nuclear Reactor Regulation to make appropriate findings on the matters specified in paragraph (a) of this section and to issue a license for the requested operation.

55. In § 50.91, the introductory paragraph, and paragraphs (a)(4) and (a)(6)(v) are revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures for an application requesting an amendment to an operating license for a facility licensed under §§ 50.21(b) or 50.22 or for a testing facility, except for amendments subject to hearings governed by subpart L of this chapter. For amendments subject to subpart L of this chapter, the following procedures will apply only to the extent specifically referenced in § 2.309(b) of this chapter, except that notice of opportunity for hearing must be published in the **Federal Register** at least 30 days before the requested amendment is issued by the Commission:

(a) * * *

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective on issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.309 of this chapter has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved in which case the Commission will provide an opportunity for a prior hearing.

* * * * *

(6) * * *

(v) Will provide a hearing after issuance, if one has been requested by

a person who satisfies the provisions for intervention specified in § 2.309 of this chapter;

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

56. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

57. In § 51.15, paragraph (b) is revised to read as follows:

§ 51.15 Time schedules.

* * * * *

(b) As specified in 10 CFR part 2, the presiding officer, the Atomic Safety and Licensing Appeal Board or the Commissioners acting as a collegial body may establish a time schedule for all or any part of an adjudicatory or rulemaking proceeding to the extent that each has jurisdiction.

58. Section 51.16 is revised to read as follows:

§ 51.16 Proprietary information.

(a) Proprietary information, such as trade secrets or privileged or confidential commercial or financial information, will be treated in accordance with the procedures provided in § 2.390 of this chapter.

(b) Any proprietary information which a person seeks to have withheld from public disclosure shall be submitted in accordance with § 2.390 of this chapter. When submitted, the proprietary information should be clearly identified and accompanied by a request, containing detailed reasons and justifications, that the proprietary information be withheld from public disclosure. A non-proprietary summary describing the general content of the proprietary information should also be provided.

59. In § 51.109, paragraph (a)(2) is revised to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

(a)(1) * * *

(2) Any other party to the proceeding who contends that it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented, shall file a contention to that effect within thirty days after the publication of the notice of hearing in the **Federal Register**. Such contention must be accompanied by one or more affidavits which set forth factual and/or technical bases for the claim that, under the principles set forth in paragraphs (c) and (d) of this section, it is not practicable to adopt the DOE environmental impact statement, as it may have been supplemented. The presiding officer shall resolve disputes concerning adoption of the DOE environmental impact statement by using, to the extent possible, the criteria and procedures that are followed in ruling on motions to reopen under § 2.326 of this chapter.

* * * * *

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

60. The authority citation for Part 52 continues to read:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

61. Section 52.21 is revised to read as follows:

§ 52.21 Hearings.

An early site permit is a partial construction permit and is therefore subject to all procedural requirements in 10 CFR part 2 which are applicable to construction permits, including the requirements for docketing in § 2.101(a)(1)–(4), and the requirements for issuance of a notice of hearing in §§ 2.104(a), (b)(1)(iv) and (v), (b)(2) to the extent it runs parallel to (b)(1)(iv) and (v), and (b)(3), provided that the designated sections may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of the proposed action. In the hearing, the presiding officer shall also determine whether, taking into consideration the site criteria contained in 10 CFR part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site can be constructed and operated without undue risk to the health and safety of the public. All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in subparts C, G and L of part 2 of this chapter.

62. In § 52.29, paragraph (b) is revised to read as follows:

§ 52.29 Application for renewal.

* * * * *

(b) Any person whose interests may be affected by renewal of the permit may request a hearing on the application for renewal. The request for a hearing must comply with 10 CFR 2.309. If a hearing is granted, notice of the hearing will be published in accordance with 10 CFR 2.309.

* * * * *

63. In § 52.39, paragraph (a)(2)(ii) is revised to read as follows:

§ 52.39 Finality of early site permit determinations.

(a) * * *

(2) * * *

(ii) A petition alleging that the site is not in compliance with the terms of the early site permit must include, or clearly reference, official NRC documents, documents prepared by or for the permit holder, or evidence admissible in a proceeding under subparts C, G and L of 10 CFR part 2, which show, prima facie, that the acceptance criteria have not been met. The permit holder and NRC staff may file answers to the petition within the time specified in 10 CFR 2.323 for answers to motions by parties and staff. If the Commission, in its judgment, decides, on the basis of the petitions and any answers thereto, that the petition meets the requirements of this paragraph, that the issues are not exempt from adjudication under 5 U.S.C. 554(a)(3), that genuine issues of material fact are raised, and that settlement or other informal resolution of the issues is not possible, then the genuine issues of material fact raised by the petition must be resolved in accordance with the provisions in 5 U.S.C. 554, 556, and 557 which are applicable to determining application for initial licenses.

* * * * *

64. In § 52.43, paragraph (b) is revised to read as follows:

§ 52.43 Relationship to Appendices M, N, and O of this part.

* * * * *

(b) Appendix O governs the NRC staff review and approval of preliminary and final standard designs. A NRC staff approval under Appendix O in no way affects the authority of the Commission or the presiding officer in any proceeding under 10 CFR part 2. Subpart B of this part 52 governs Commission approval, or certification, of standard designs by rulemaking.

* * * * *

65. In § 52.51, paragraphs (b) and (c) are revised to read as follows:

§ 52.51 Administrative review of applications.

* * * * *

(b) The rulemaking procedures must provide for notice and comment and an opportunity for an informal hearing under subparts C and L before an Atomic Safety and Licensing Board. The procedures for the informal hearing must include the opportunity for written presentations made under oath or affirmation and for oral presentations and questioning if the Board finds them either necessary for the creation of an adequate record or the most expeditious way to resolve controversies. Ordinarily, the questioning in the informal hearing will be done by members of the Board, using either the Board's questions or questions submitted to the Board by the parties. The Board may also request authority from the Commission to use additional procedures, such as direct and cross examination by the parties, or may request that the Commission convene a formal hearing under subparts C and G of 10 CFR part 2 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 NRC staff will be a party in the hearing.

(c) The decision in such a hearing will be based only on information on which all parties have had an opportunity to comment, either in response to the notice of proposed rulemaking or in the informal hearing. Notwithstanding anything in 10 CFR 2.390 to the contrary, proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for construction permits and operating licenses under 10 CFR part 50, provided that the design certification shall be published in chapter I of this title.

66. In Appendix A to part 52, Section VIII, paragraphs B.5.f., C.3. and C.5. are revised to read as follows:

Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

* * * * *

C. * * *

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

* * * * *

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

* * * * *

67. In Appendix B to part 52, Section VIII, paragraphs B.5.f., C.3. and C.5. are revised to read as follows:

Appendix B to Part 52—Design Certification Rule for the System 80+ Design

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall

certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

* * * * *

C. * * *

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

* * * * *

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

* * * * *

68. In Appendix C to part 52, Section VIII, paragraphs B.5.f., C.3. and C.5. are revised to read as follows:

Appendix C to Part 52—Design Certification Rule for the AP600 Design

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.309, the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

* * * * *

C. * * *

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.335 are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

* * * * *

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.309 and must demonstrate why special circumstances as defined in 10 CFR 2.335 are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

* * * * *

69. In Appendix N to part 52, the three introductory paragraphs are revised to read as follows:

Appendix N to Part 52—Standardization of Nuclear Power Plant Designs: Licenses To Construct and Operate Nuclear Power Reactors of Duplicate Design at Multiple Sites

Section 101 of the Atomic Energy Act of 1954, as amended, and § 50.10 of this chapter require a Commission license to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any production or utilization facility. The regulations in Part 50 of this chapter require the issuance of a construction permit by the Commission before commencement of construction of a production or utilization facility, except as provided in § 50.10(e) of this chapter, and the issuance of an operating license before the operation of the facility.

The Commission's regulations in Part 2 of this chapter specifically provide for the holding of hearings on particular issues separately from other issues involved in hearings in licensing proceedings, and for the consolidation of adjudicatory proceedings and of the presentations of parties in adjudicatory proceedings such as licensing proceedings (§§ 2.316, 2.317).

This appendix sets out the particular requirements and provisions applicable to situations in which applications are filed by one or more applicants for licenses to construct and operate nuclear power reactors of essentially the

same design to be located at different sites.

* * * * *

70. In Appendix O to part 52, paragraph 6 is revised to read as follows:

Appendix O to Part 52—Standardization of Design: Staff Review of Standard Designs

* * * * *

6. The determination and report by the regulatory staff shall not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Board Panel, and other presiding officers in any proceeding under Part 2 of this chapter.

* * * * *

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

71. The authority citation for part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842). Section 54.17 also issued under E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

72. In § 54.29, paragraph (c) is revised to read as follows:

§ 54.29 Standards for issuance of a renewed license.

* * * * *

(c) Any matters raised under § 2.355 have been addressed.

PART 60—DISPOSAL OF HIGH LEVEL WASTE IN GEOLOGICAL REPOSITORIES

73. The authority citation for part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–01, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

74. In § 60.63, paragraph (a) is revised to read as follows:

§ 60.63 Participation in license reviews.

(a) State and local governments and affected Indian Tribes may participate in license reviews as provided in subpart C of part 2 of this chapter. A State in which a repository for high-level radioactive waste is proposed to be located and any affected Indian Tribe shall have an unquestionable legal right to participate as a party in such proceedings.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

75. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

76. Section 70.23a is revised to read as follows:

§ 70.23a Hearing required for uranium enrichment facility.

The Commission will hold a hearing under 10 CFR part 2, subparts A, C, G, and I, on each application for issuance of a license for construction and operation of a uranium enrichment facility. The Commission will publish public notice of the hearing in the **Federal Register** at least 30 days before the hearing.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

77. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f). Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

78. In § 73.21, paragraph (c)(1)(vi) is revised to read as follows:

§ 73.21 Requirements for the protection of safeguards information.

* * * * *

(c) * * *

(1) * * *

(vi) An individual to whom disclosure is ordered under § 2.709(e) of this chapter.

* * * * *

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

79. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

80. In § 75.12, paragraph (c) is revised to read as follows:

§ 75.12 Communication of information to IAEA.

* * * * *

(c) A request made under § 2.390(b) of this chapter will not be treated as a request under this section unless the application makes specific reference to this section, nor shall a determination to withhold information from public disclosure necessarily require a determination that this information not be transmitted physically to the IAEA.

* * * * *

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

81. The authority citation for part 76 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

82. In § 76.41, paragraph (b) is revised to read as follows:

§ 76.41 Record underlying decision.

* * * * *

(b) All public comments and correspondence in any proceeding regarding an application for a certificate must be made a part of the public docket of the proceeding, except as provided under 10 CFR 2.390.

83. In § 76.70, paragraph (c)(2)(v) is revised to read as follows:

§ 76.70 Post-issuance.

* * * * *

(c) * * *

(2) * * *

(v) Provide that the Commission may make a final decision after consideration of the written submissions or may in its discretion adopt by order, upon the Commission's own initiative or at the request of the Corporation or an interested person, further procedures for a hearing of the issues before making a final enforcement decision. These procedures may include requirements for further participation in the proceeding, such as the requirements for intervention under part 2, subparts C, G or L of this chapter. Submission of written comments by interested persons do not constitute entitlement to further participation in the proceeding. Further procedures will not normally be provided for at the request of an interested person unless the person is adversely affected by the order.

* * * * *

84. In § 76.72, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 76.72 Miscellaneous procedural matters.

(a) The filing of any petitions for review or any responses to these petitions are governed by the procedural requirements set forth in 10 CFR 2.302(a) and (c), 2.304, 2.306, 2.307, and 2.305. Additional guidance regarding the filing and service of petitions for review of the Director's decision and responses to these petitions may be provided in the Director's decision or by order of the Commission.

(b) The Secretary of the Commission has the authority to rule on procedural matters set forth in 10 CFR 2.345.

(c) There are no restrictions on ex parte communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of the regulatory process, with the exception that the rules on ex parte communications and separation of functions set forth in 10 CFR 2.346 and 2.347 apply to proceedings under 10 CFR part 2 for imposition of a civil penalty.

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subparts C and G, will be applied in connection with NRC action to impose a civil penalty pursuant to section 234 of the Atomic Energy Act of 1954, as amended, or section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR part 21 (Reporting of Defects and Noncompliance), as authorized by section 1312(e) of the Atomic Energy Act of 1954, as amended.

* * * * *

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

85. The authority citation for Part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec 5, Pub. L. 101–575, 104 Stat 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et seq.).

86. In § 110.73, paragraph (b) is revised to read as follows:

§ 110.73 Availability of NRC records.

* * * * *

(b) Proprietary information provided under this part may be protected under part 9 and § 2.390(b), (c), and (d) of this chapter.

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

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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