



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 12, 1997

DOCKETED
USNRC

'97 FEB 12 P1:59

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Mr. Ralph L. Tetrick
18990 SW 270 Street
Homestead, FL 33031

Re: Filing of documents with the Office of the Secretary
In Docket Number 55-20726-SP

* SERVED FEB 12 1997

Dear Mr. Tetrick:

Recently, the Docketing and Service Branch learned that in response to a Memorandum and Order of the Presiding Officer in this proceeding, dated December 9, 1996, you served your written presentation, bearing a date of December 30, 1996 on the document, on the Office of Commission Appellate Adjudication, the NRC Staff Counsel, the Presiding Officer and the Special Assistant in this proceeding. However, you did not serve the Secretary with the original and two conforming copies of the presentation.

Kindly provide the requisite copies of the presentation and any other documents that you have served during the course of this proceeding, or may serve in the future, to the Secretary of the Commission, Attention: Docketing and Service Branch. For guidance, I have enclosed a copy of the rules for 10 CFR Subpart L proceedings. Please note the filing requirements stated in Section 2.1203.

Sincerely,

Emile L. Julian, Chief
Docketing and Service Branch

Enclosure: As stated
cc: Service List

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PARTS 0 TO 50
Revised as of January 1, 1996



al dispute, the reason on of the Commission is and on the resolution of and the reason why an ad- ing is likely to resolve ith regard to issues not resolution in an adju- ing, the presiding officer brief statement of the disposition. If the pre- inds that there are no of fact or law requiring a adjudicatory hearing, ficer shall also dismiss

of law or fact shall be resolution in an adju- g unless the presiding es that:

genuine and substantial which can only be re- cipient accuracy by the evidence in an adju- ; and

n of the Commission is in whole or in part on that dispute.

a determination under this section, the pre- ll not consider:

elating to the design, operation of any civil- er reactor already li- at the site, or any ci- ver reactor for which rmit has been granted the presiding officer any such issue sub- the design, construc- of the facility or ac- license application, amendment to ex- clear fuel storage ca- sidered; or

or design issue fully ided by the Commis- with the issuance of mit or operating li- nuclear power reac- less (i) such issue re- sion of siting or de- Commission follow- and (ii) the presiding part 55 that is initiated by a notice of hearing issued under § 2.104, or (2) a no- tice of proposed action under § 2.105, or a request for hearing under subpart B of 10 CFR part 2 on an order or a civil

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and the spent nuclear fuel storage ca- pacity is being considered.

(d) The provisions of paragraph (c) of this section shall apply only with re- spect to licenses, authorizations, or amendments to licenses or authoriza- tions applied for under the Atomic En- ergy Act of 1954, as amended, before December 31, 2005.

(e) Unless the presiding officer dis- poses of all issues and dismisses the proceeding, appeals from the presiding officer's order disposing of issues and designating one or more issues for reso- lution in an adjudicatory hearing are interlocutory and must await the end of the proceeding.

[50 FR 41671, Oct. 15, 1985; 50 FR 45386, Oct. 31, 1985]

§ 2.1117 Applicability of other sections

In proceedings subject to this sub- part, the provisions of subparts A and G of 10 CFR part 2 are also applica- ble, except where inconsistent with the provisions of this subpart.

Subpart L—Informal Hearing Pro- cedures for Adjudications in Materials and Operator Li- censing Proceedings

SOURCE: 54 FR 8276, Feb. 28, 1989, unless otherwise noted.

§ 2.1201 Scope of subpart.

(a) The general rules of this subpart govern procedure in any adjudication initiated by a request for a hearing in a proceeding for—

(1) The grant, transfer, renewal, or li- censee-initiated amendment of a mate- rials license subject to parts 30, 32 through 35, 39, 40, or 70 of this chapter; or

(2) The grant, renewal, or licensee- initiated amendment of an operator or senior operator license subject to part 55 of this chapter.

(b) Any adjudication regarding, (1) a materials license subject to parts 30, 32 through 35, 39, 40, or 70, or an operator or senior operator license subject to part 55 that is initiated by a notice of hearing issued under § 2.104, or (2) a no- tice of proposed action under § 2.105, or a request for hearing under subpart B of 10 CFR part 2 on an order or a civil

§ 2.1203

penalty, is to be conducted in accord- ance with the procedures set forth in subpart G of 10 CFR part 2.

[57 FR 4153, Feb. 4, 1992]

§ 2.1203 Docket; filing; service.

(a) The Secretary shall maintain a docket for each adjudication subject to this subpart, commencing with the fil- ing of a request for a hearing. All pa- pers, including any request for a hear- ing, petition for leave to intervene, correspondence, exhibits, decisions, and orders, submitted or issued in the proceeding; the hearing file compiled in accordance with § 2.1231; and the transcripts of any oral presentations or oral questioning made in accordance with § 2.1235 or in connection with any appeal under this subpart must be filed with the Office of the Secretary and must be included in the docket. The public availability of official records relating to the proceeding is governed by § 2.790.

(b) Documents are filed with the Of- fice of the Secretary in adjudications subject to this subpart either—

(1) By delivery to the Docketing and Service Branch of the Office of the Sec- retary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, At- tention: Docketing and Service Branch.

Filing by mail or telegram is com- plete as of the time of deposit in the mail or with the telegraph company. Filing by other means is complete as of the time of delivery to the Docketing and Service Branch of the Office of the Secretary.

(c) Each document submitted for fil- ing in an adjudication subject to this part, other than an exhibit, must be legibly typed, must bear the docket number and the title of the proceeding, and, if it is the first document filed by that participant, must designate the name and address of a person upon whom service can be made. The docu- ment also must be signed in accordance with § 2.708(c). A document, other than correspondence, must be filed in an original and two conforming copies. Documents filed by telegram are gov- erned by § 2.708(f). A document that fails to conform to these requirements

may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any document tendered but not accepted for filing may not be entered in the docket.

(d) Computation of time and extension and reduction of time limits is done in accordance with §§ 2.710-2.711.

(e) A request for a hearing or a petition for leave to intervene must be served in accordance with § 2.712 and § 2.1205(e), (j). All other documents issued by the presiding officer or the Commission or offered for filing are served in accordance with § 2.712.

§ 2.1205 Request for a hearing; petition for leave to intervene.

(a) Any person whose interest may be affected by a proceeding for the grant, transfer, renewal, or licensee-initiated amendment of a license subject to this subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, a license transfer, or a license renewal who is issued a notice of proposed denial or a notice of denial and who desires a hearing shall file the request for the hearing within the time specified in § 2.103 in all cases. An applicant may include in the request for hearing a request that the presiding officer recommend to the Commission that procedures other than those authorized under this subpart be used in the proceeding, provided that the applicant identifies the special factual circumstances or issues which support the use of other procedures.

(c) A person other than an applicant shall file a request for a hearing within—

(1) Thirty (30) days of the agency's publication of the initial FEDERAL REGISTER notice referring or relating to an application or the licensing action requested by an application, which must include a reference to the opportunity for a hearing under the procedures set forth in this subpart; or

(2) If a FEDERAL REGISTER notice is not published in accordance with paragraph (c)(1), the earliest of—

(i) Thirty (30) days after the requester receives actual notice of a pending application, or

(ii) Thirty (30) days after the requester receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty (180) days after agency action granting an application in whole or in part.

(d) The request for a hearing filed by a person other than an applicant must describe in detail—

(1) The interest of the requester in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in paragraph (g) of this section;

(3) The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with paragraph (c) of this section.

(e) Each request for a hearing must be served, by delivering it personally or by mail to—

(1) The applicant (unless the requester is the applicant); and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(f) Within ten (10) days of service of a request for a hearing filed under paragraph (c) of this section, the applicant may file an answer. The NRC staff, if it chooses or is ordered to participate as a party in accordance with § 2.1213, may file an answer to a request for a hearing within ten (10) days of the designation of the presiding officer.

(g) In ruling on a request for a hearing filed under paragraph (c) of this section, the presiding officer shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely. The presiding officer also shall determine that the requester meets the judicial standards for standing and shall consider, among other factors—

(1) The nature of the right under the proceeding;

(2) The nature of the requester's other interest;

(3) The position that may be taken upon the request;

(h) If a hearing is held, the applicant shall be parties to the request for a hearing.

(i) The applicant shall be a party to the hearing, along with the staff, if the applicant is to participate with § 2.1213.

(j) If a request for a hearing is filed and a notice of hearing has been published in the FEDERAL REGISTER, a notice of hearing shall be published in the FEDERAL REGISTER.

(1) The time for filing a request for a hearing;

(2) The time for filing a request for a hearing is to be considered;

(3) The time for filing a request for a hearing is to be considered;

(4) The time for filing a request for a hearing is to be considered;

(5) The time for filing a request for a hearing is to be considered;

(j) Any person who must be served with the date of the hearing. The presiding officer shall determine that the requester meets the judicial standards for standing and shall consider, among other factors—

(1) A petition for a hearing must be served on the NRC staff—

(i) By delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) By delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

erty (30) days after the receives actual notice of an action granting an application in part, or

hundred and eighty (180) agency action granting an in whole or in part. request for a hearing filed by other than an applicant must detail—
interest of the requestor in filing;
that interest may be affected by the proceeding, including reasons why the requestor permitted a hearing, with reference to the factors set forth in paragraph (g) of this section;
requestor's areas of concern regarding the licensing activity that is the subject of the proceeding; and
circumstances establishing the need for a hearing is timely in accordance with paragraph (c) of

request for a hearing must be delivered in person or

applicant (unless the applicant); and
C staff, by delivery to the Director for Operations, One North, 11555 Rockville Pike, MD 20852, or by mail to the Executive Director for U.S. Nuclear Regulatory Commission, Washington, DC 20555.

on (10) days of service of a hearing filed under paragraph (c) of this section, the applicant answer. The NRC staff, if it is ordered to participate as a party in accordance with § 2.1213, may file an answer. The NRC staff, if it is ordered to participate as a party in accordance with § 2.1213, may file an answer.

on a request for a hearing under paragraph (c) of this section, the applicant shall specify the areas of concern to the subject matter and that the petitioning officer shall also consider that the requestor's interests, among other

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

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

(3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

(h) If a hearing request filed under paragraph (b) of this section is granted, the applicant and the NRC staff shall be parties to the proceeding. If a hearing request filed under paragraph (c) of this section is granted, the requestor shall be a party to the proceeding along with the applicant and the NRC staff, if the staff chooses or is ordered to participate as a party in accordance with § 2.1213.

(i) If a request for a hearing is granted and a notice of the kind described in paragraph (c)(1) previously has not been published in the FEDERAL REGISTER, a notice of hearing must be published in the FEDERAL REGISTER stating—

(1) The time, place, and nature of the hearing;

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

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

(4) The time within which any other person whose interest may be affected by the proceeding may petition for leave to intervene, as specified in paragraph (j) of this section; and

(5) The time within which a request to participate under § 2.1211(b) must be filed.

(j) Any petition for leave to intervene must be filed within thirty (30) days of the date of publication of the notice of hearing. The petition must set forth the information required under paragraph (d) of this section.

(k) A petition for leave to intervene must be served upon the applicant. The petition also must be served upon the NRC staff—

(1) By delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) Within ten (10) days of service of a petition for leave to intervene, the applicant and the NRC staff, if the staff chooses or is ordered to participate as a party in accordance with § 2.1213, may file an answer.

(3) Thereafter, the petition for leave to intervene must be ruled upon by the presiding officer, taking into account the matters set forth in paragraph (g) of this section.

(4) If the petition is granted, the petitioner becomes a party to the proceeding.

(k)(1) A request for a hearing or a petition for leave to intervene found by the presiding officer to be untimely under paragraph (c) or (j) will be entertained only upon determination by the Commission or the presiding officer that the requestor or petitioner has established that—

(1) The delay in filing the request for a hearing or the petition for leave to intervene was excusable; and

(2) The grant of the request for a hearing or the petition for leave to intervene will not result in undue prejudice or undue injury to any other participant in the proceeding, including the applicant and the NRC staff, if the staff chooses or is ordered to participate as a party in accordance with § 2.1213.

(2) If the request for a hearing on the petition for leave to intervene is found to be untimely and the requestor or petitioner fails to establish that it otherwise should be entertained under paragraph (k)(1) of this section, the request or petition will be treated as a petition under § 2.206 and referred for appropriate disposition.

(1) The filing or granting of a request for a hearing or petition for leave to intervene need not delay NRC staff action regarding an application for a licensing action covered by this subpart.

(m) An order granting a request for a hearing or a petition for leave to intervene may condition or limit participation in the interest of avoiding repetitive factual presentations and argument.

(n) If the presiding officer denies a request for a hearing or a petition for leave to intervene in its entirety, the action is appealable within ten (10) days of service of the order on the

question whether the request for a hearing or the petition for leave to intervene should have been granted in whole or in part. If a request for a hearing or a petition for leave to intervene is granted, parties other than the requestor or petitioner may appeal that action within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been denied in its entirety. An appeal may be taken by filing and serving upon all parties a statement that succinctly sets out, with supporting argument, the errors alleged. The appeal may be supported or opposed by any party by filing a counter-statement within fifteen (15) days of the service of the appeal brief.

[54 FR 8276, Feb. 28, 1989, as amended at 56 FR 36806, Sept. 7, 1991; 56 FR 29189, June 6, 1991]

§2.1207 Designation of presiding officer.

(a) Unless otherwise ordered by the Commission or as provided in paragraph (b) of this section, within ten (10) days of receiving from the Office of the Secretary a request for a hearing relating to a licensing proceeding covered by this subpart, the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a single member of the panel to rule on the request for a hearing and, if necessary, to serve as the presiding officer to conduct the hearing.

(b) For any request for hearing relating to an application under 10 CFR part 70 to receive and store unirradiated fuel at the site of a production or utilization facility that also is the subject of a proceeding under subpart G of this part for the issuance of an operating license, within ten (10) days of receiving from the Office of the Secretary a request for a hearing the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a Licensing Board conducting the operating license proceeding to rule on the request for a hearing and, if necessary, to conduct the hearing in accordance with this subpart. Upon certification to the Commission by the Licensing Board designated to conduct the hearing that the matters presented for ad-

judication by the parties with respect to the part 70 application are substantially the same as those being heard in the pending proceeding under 10 CFR part 50, the Licensing Board may conduct the hearing in accordance with the procedures in subpart G.

§2.1208 Power of presiding officer.

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

(a) Regulate the course of the hearing and the conduct of the participants;

(b) Dispose of procedural requests or similar matters;

(c) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose;

(d) Certify questions to the Commission for determination, either in the presiding officer's discretion or on direction of the Commission;

(e) Reopen a closed record for the reception of further information at any time prior to initial decision in accordance with §2.734;

(f) Administer oaths and affirmations;

(g) Issue initial decisions;

(h) Issue subpoenas requiring the attendance and testimony of witnesses at the hearing or the production of documents for the hearing;

(i) Receive written or oral evidence and take official notice of any fact in accordance with §2.743(i);

(j) Appoint special assistants from the Atomic Safety and Licensing Board Panel in accordance with §2.722;

(k) Recommend to the Commission that procedures other than those authorized under this subpart be used in a particular proceeding; and

(l) Take any other action consistent with the Act and this chapter.

[54 FR 8276, Feb. 28, 1989, as amended at 56 FR 29411, June 27, 1991]

§2.1211 Participation by a person not a party.

(a) The presiding officer may permit a person who is not a party to make a

ation by the parties with respect to the part 70 application are substantially the same as those being heard in the pending proceeding under 10 CFR 50, the Licensing Board may conduct the hearing in accordance with the procedures in subpart G.

Power of presiding officer.

The presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order.

The presiding officer has all the powers necessary to those ends, including the power to—

(1) Regulate the course of the hearing and the conduct of the participants;

(2) Dispose of procedural requests or motions;

(3) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose;

(4) Certify questions to the Commission for determination, either in the presiding officer's discretion or on the order of the Commission;

(5) Reopen a closed record for the receipt of further information at any time prior to initial decision in accordance with § 2.734;

(6) Administer oaths and affirmations;

(7) Issue initial decisions;

(8) Issue subpoenas requiring the attendance and testimony of witnesses at the hearing or the production of documents or the hearing;

(9) Receive written or oral evidence and give official notice of any fact in accordance with § 2.743(i);

(10) Employ special assistants from the Atomic Safety and Licensing Board in accordance with § 2.722;

(11) Recommend to the Commission procedures other than those authorized under this subpart be used in a particular proceeding; and

(12) Take any other action consistent with the Act and this chapter.

76, Feb. 26, 1989, as amended at 56 June 27, 1991]

Participation by a person not a party.

The presiding officer may permit any person who is not a party to make a

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limited appearance in order to state his or her views on the issues. Limited appearances may be in writing or oral, at the discretion of the presiding officer, and are governed by rules adopted by the presiding officer. A limited appearance statement is not to be considered part of the decisional record under § 2.1251(c).

(b) Within thirty days of an order granting a request for a hearing made under § 2.1205(b)-(c) or, in instances when it is published, within thirty days of a notice of hearing issued under § 2.1205(i), the representative of an interested State, county, municipality, or an agency thereof, may request an opportunity to participate in a proceeding under this subpart. The request for an opportunity to participate must state with reasonable specificity the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding. Upon receipt of a request that is filed in accordance with these time limits and that specifies the requestor's areas of concern, the presiding officer shall afford the representative a reasonable opportunity to make written and oral presentations in accordance with §§ 2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this subsection may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

§ 2.1213 Role of the NRC staff.

If a hearing request is filed under § 2.1205(b), the NRC staff shall be a party to the proceeding. If a hearing request is filed under § 2.1205(c), within ten (10) days of the designation of a presiding officer pursuant to § 2.1207 the NRC staff shall notify the presiding officer whether or not the staff desires to participate as a party to the adjudication. In addition, upon a determination by the presiding officer that the resolution of any issue in the proceeding would be aided materially by staff's participation in the proceeding as a party, the presiding officer may order or permit the NRC staff to participate

as a party with respect to that particular issue.

[54 FR 8278, Feb. 28, 1989; 54 FR 53035, Dec. 26, 1989]

§ 2.1215 Appearance and practice.

(a) An individual may appear in an adjudication under this subpart on his or her own behalf or by an attorney-at-law. Representation by an attorney-at-law is not necessary in order for an organization or a § 2.1211(b) participant to appear in an adjudication conducted under this subpart. If the representative of an organization is not an attorney-at-law, he or she shall be a member or officer of the organization represented. Upon request of the presiding officer, an individual acting as a representative shall provide appropriate information establishing the basis of his or her authority to act in a representational capacity.

(b) Any action to reprimand, censure, or suspend a party, a § 2.1211(b) participant, or the representative of a party or a § 2.1211(b) participant must be in accordance with the procedures in § 2.713(c).

HEARINGS

§ 2.1231 Hearing file; prohibition on discovery.

(a) Within thirty (30) days of the presiding officer's entry of an order granting a request for a hearing, the NRC staff shall file in the docket, present to the presiding officer, and make available to the applicant and any other party to the proceeding a hearing file. Thereafter, within ten (10) days of the date a petition for leave to intervene or a request to participate under § 2.1211(b) is granted, the NRC staff shall make the hearing file available to the petitioner or the § 2.1211(b) participant.

(1) The hearing file must be made available to the applicant and any other party or § 2.1211(b) participant to the proceeding either by—

(i) Service in accordance with § 2.1203(e); or

(ii) Placing the file in an established local public document room in the vicinity of the principal location where nuclear material that is the subject of a proceeding under this subpart will be

possessed, and informing the applicant, party, or §2.1211(b) participant in writing of its action and the location of the file. If an established local public document room does not exist, the NRC staff will arrange for the documents contained in the hearing file, along with any other material docketed in accordance with §2.1203, to be made available for public inspection and copying during the course of the adjudication in a library or other facility that is accessible to the general public during regular business hours and is in the vicinity of the principal location where the nuclear material that is the subject of the proceeding will be possessed.

(2) The hearing file also must be made available for public inspection and copying during regular business hours at the NRC Public Document Room in Washington, DC.

(b) The hearing file will consist of the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. Hearing file documents already in an established local public document room or the NRC Public Document Room when the hearing request 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 for the docket, the presiding officer, and the applicant or any party or §2.1211(b) participant in a manner consistent with the way the hearing file was made available initially under paragraph (a).

(d) A party or §2.1211(b) participant may not seek discovery from any other party, §2.1211(b) participant, or the NRC or its personnel, whether by document production, deposition, interrogatories, or otherwise.

§2.1233 Written presentations; written questions.

(a) After publication of a notice of hearing in accordance with §2.1205(d) and after the NRC staff has made the hearing file available in accordance with §2.1231, the parties and §2.1211(b) participants shall be afforded the opportunity to submit, under oath or affirmation, written presentations of their arguments and documentary data, informational material, and other supporting written evidence at the time or times and in the sequence the presiding officer establishes by appropriate order. The presiding officer also may, on his or her initiative, submit written questions to the parties to be answered in writing, under oath or affirmation, and supported by appropriate documentary data, informational material, or other written evidence.

(b) In a hearing initiated under §2.1205(b), the initial written presentation of the applicant that is issued a notice of proposed denial or a notice of denial must describe in detail any deficiency or omission in the agency's denial or proposed denial of its application and what relief is sought with respect to each deficiency or omission.

(c) In a hearing initiated under §2.1205(c), the initial written presentation of a party that requested a hearing or petitioned for leave to intervene must describe in detail any deficiency or omission in the license application, with references to any particular section or portion of the application considered deficient, give a detailed statement of reasons why any particular section or portion is deficient or why an omission is material, and describe in detail what relief is sought with respect to each deficiency or omission.

(d) A party or §2.1211(b) participant making an initial written presentation under this section shall submit with its presentation or identify by reference to a generally available publication or source, such as the hearing file, all documentary data, informational material, or other written evidence upon which it relies to support or illustrate each omission or deficiency complained of. Thereafter, additional documentary data, informational material, or other written evidence may be submitted or

referenced by NRC staff, or participant in a written response to a the presiding officer, permission.

(e) Strictly apply to written this section. may, on motion of a participant, the presiding officer's own motion of a written response to a written motion, in unreliable.

§2.1235 Oral presentations.

(a) Upon necessary for decision, the presiding officer oral presentation §2.1211(b) participant by written are subject to the limits the Responsible examination the presiding party or §2.1211(b) participant pose to a question.

(b) Oral presentation to oral question oral evidence or affirmation or oral question graphically requested pursuant to the Act, must be ordered by the presiding officer.

(c) Strictly apply to oral presentation, but on motion of a participant, own initial oral presentation questioning relevant, immaterial.

[54 FR 8279, 1989]

§2.1237 Motion.

(a) Motion must be in accordance with the presiding officer.

(b) Unless the presiding officer

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presentations; written

location of a notice of
rdance with § 2.1205(i)
RC staff has made the
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§ 2.1211(b) participant
written presentation
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l material, or other
ay be submitted or

referenced by any party, other than the
NRC staff, or by any § 2.1211(b) partici-
pant in a written presentation or in re-
sponse to a written question only as
the presiding officer, in his or her dis-
cretion, permits.

(e) Strict rules of evidence do not
apply to written submissions under
this section, but the presiding officer
may, on motion or on the presiding of-
ficer's own initiative, strike any por-
tion of a written presentation or a re-
sponse to a written question that is cu-
mulative, irrelevant, immaterial, or
unreliable.

§ 2.1235 Oral presentations; oral ques- tions.

(a) Upon a determination that it is
necessary to create an adequate record
for decision, in his or her discretion the
presiding officer may allow or require
oral presentations by any party or
§ 2.1211(b) participant, including testi-
mony by witnesses. Oral presentations
are subject to any appropriate time
limits the presiding officer imposes.
Responsibility for the conduct of the
examination of any witness rests with
the presiding officer who may allow a
party or § 2.1211(b) participant to pro-
pose questions for the presiding officer
to pose to a witness.

(b) Oral presentations and responses
to oral questioning to be relied upon as
oral evidence must be given under oath
or affirmation. All oral presentations
or oral questioning must be steno-
graphically reported and, except as re-
quested pursuant to section 181 of the
Act, must be public unless otherwise
ordered by the Commission.

(c) Strict rules of evidence do not
apply to oral submissions under this
section, but the presiding officer may,
on motion or on the presiding officer's
own initiative, strike any portion of an
oral presentation or a response to oral
questioning that is cumulative, irrele-
vant, immaterial, or unreliable.

[54 FR 8279, Feb. 28, 1989; 54 FR 53035, Dec. 26,
1989]

§ 2.1237 Motions; burden of proof.

(a) Motions presented in the proceed-
ing must be presented and disposed of
in accordance with §§ 2.730 (a)-(g).

(b) Unless otherwise ordered by the
presiding officer, the applicant or the

proponent of an order has the burden of
proof.

§ 2.1239 Consideration of Commission rules and regulations in informal adjudications.

(a) Except as provided in paragraph
(b) of this section, any regulation of
the Commission issued in its program
for the licensing and regulation of pro-
duction and utilization facilities,
source material, special nuclear mate-
rial, or byproduct material may not be
challenged in any adjudication subject
to this subpart.

(b) A party to an adjudication subject
to this subpart may petition that the
application of a Commission regulation
specified in paragraph (a) of this sec-
tion be waived or an exception made
for the particular proceeding. The sole
ground for a request for waiver or ex-
ception must be that special cir-
cumstances exist so that application of
the regulation to the subject matter of
the proceeding would not serve the pur-
poses for which the regulation was
adopted. In the absence of a prima
facie showing of special circumstances,
the presiding officer may not further
consider the matter. If the presiding of-
ficer determines that a prima facie
showing has been made, he or she shall
certify directly to the Commission it-
self for determination the matter of
whether special circumstances support
a waiver or an exception and whether a
waiver or an exception should be grant-
ed. The Commission's determination
shall be made after any further pro-
ceeding the Commission deems appro-
priate.

§ 2.1241 Settlement of proceedings.

The fair and reasonable settlement of
proceedings subject to this subpart is
encouraged. A settlement must be ap-
proved by the presiding officer or the
Commission as appropriate in order to
be binding in the proceeding.

[56 FR 29411, June 27, 1991]

INITIAL DECISION, COMMISSION REVIEW, AND FINAL DECISION

§ 2.1251 Initial decision and its effect.

(a) Unless the Commission directs
that the record be certified to it in ac-
cordance with paragraph (b) of this sec-

§2.1253

tion, 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 thirty (30) days after the date of issuance, unless any party petitions for Commission review in accordance with §2.786 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 may omit an initial decision and prepare a final decision upon a finding that due and timely execution of its functions so requires.

(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. The initial decision must 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) The appropriate ruling, order, or denial of relief with its effective date, and

(3) The time within which a petition for review may be filed, the time within which any answer to a petition for review may be filed, and the date when the decision becomes final in the absence of the Commission taking review of the decision.

(d) Matters not put into controversy by the parties may not be examined and decided by the presiding officer. If the presiding officer believes that a serious safety, environmental, or common defense and security matter exists that has not been placed in controversy, the presiding officer shall advise the Commission promptly of the basis for that view, and the Commission may take appropriate action.

(e) Pending review and final decision by the Commission, an initial decision resolving all issues before the presiding officer in favor of authorizing licensing action subject to this subpart is immediately effective upon issuance except—

(1) As provided in any order issued in accordance with §2.1263 that stays the effectiveness of an initial decision; or

(2) As otherwise provided by the Commission in special circumstances.

(f) Following an initial decision resolving all issues in favor of the licensing action as specified in paragraph (e) of this section, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing of a petition for review or pendency of any review taken by the Commission pursuant to §2.786, shall take the appropriate licensing action upon making the appropriate licensing findings promptly, except as may be provided pursuant to paragraph (e)(1) or (2) of this section.

[54 FR 8280, Feb. 28, 1989; 54 FR 53035, Dec. 26, 1989; 56 FR 29411, June 27, 1991]

§2.1253 Petitions for review of initial decisions.

Parties are §2.1211(b) participants may petition for review of an initial decision under this subpart in accordance with the procedures set out in §§2.786 and 2.763 or the Commission may review the decision on its own motion. Commission review will be conducted in accordance with those procedures the Commission deems appropriate. The filing of a petition for review is mandatory for a party to exhaust its administrative remedies before seeking judicial review.

[56 FR 29411, June 27, 1991]

§2.1259 Final decision; petition for reconsideration.

(a) Commission action to render a final decision must be in accordance with §2.770.

(b) The provisions of §2.771 govern the filing of petitions for reconsideration.

§2.1261 Authority of the Secretary to rule on procedural matters.

The Secretary or the Assistant Secretary may rule on procedural matters relating to proceedings conducted by the Commission itself under this subpart to the same extent they can do so under §2.772 for proceedings under subpart G.

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Nuclear Regulation

§2.1263 Stays of actions or of the presiding officer pending hearing

Applications for stay or action of the presiding officer by NRC staff in accordance with §2.788, except by staff licensing action, completion of this subpart may request for a intervene is filed days of the staff later. A request for licensing action, except for an adjudicatory which the licensing.

APPENDIX A TO GENERAL PRINCIPLES OF CONDUCT OF ISSUANCE OF AND OPERATIONAL PROCEDURES REQUIRED UNDER ATOMIC ENERGY ACT AMENDED*

The following and procedure of the mission expects safety and licensing proceedings relating to reactors and other facilities for which under section 189 of 1954, as amended Reorganization are also applicable, except as indicate, or except VIII. Section V specifically applicable proceedings. The Commission's is

*In the event provisions of this part, the Except as the case, this states cable to licensing prescribed in the conducted by a hearing officer.

in any order issued in §2.1263 that stays the initial decision; or as provided by the special circumstances. An initial decision rendered in favor of the licensee is affirmed in paragraph (e) of the Director of Nuclear Safety and Safety, notwithstanding petition for review or review taken by the licensee to §2.786, shall stay licensing action appropriate licensing action except as may be provided in paragraph (e)(1) of §2.786.

89: 54 FR 53035, Dec. 26, 27, 1991]

for review of initial

§2.11(b) participants review of an initial subpart in accordance with procedures set out in the Commission on its own motion review will be conducted with those proceedings deemed appropriate for a party to exhaust remedies before review.

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on; petition for re-

tion to render a decision in accordance

of §2.771 governs for reconsideration

f the Secretary to matters.

he Assistant Secretary procedural matters conducted by the Commission under this subpart they can do so under sub-

Nuclear Regulatory Commission

§2.1263 Stays of NRC staff licensing actions or of decisions of a presiding officer or the Commission, pending hearing or review.

Applications for a stay of any decision or action of the Commission, a presiding officer, or any action by the NRC staff in issuing a license in accordance with §2.1205(1) are governed by §2.786, except that any request for a stay of staff licensing action pending completion of an adjudication under this subpart must be filed at the time a request for a hearing or petition to intervene is filed or within ten (10) days of the staff's action, whichever is later. A request for a stay of a staff licensing action must be filed with the adjudicatory decisionmaker before which the licensing proceeding is pending.

APPENDIX A TO PART 2—STATEMENT OF GENERAL POLICY AND PROCEDURE: CONDUCT OF PROCEEDINGS FOR THE ISSUANCE OF CONSTRUCTION PERMITS AND OPERATING LICENSES FOR PRODUCTION AND UTILIZATION FACILITIES FOR WHICH A HEARING IS REQUIRED UNDER SECTION 189A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED*

The following statement of general policy and procedure explains in detail the procedures which the Nuclear Regulatory Commission expects to be followed by atomic safety and licensing boards in the conduct of proceedings relating to the issuance of construction permits for nuclear power and test reactors and other production or utilization facilities for which a hearing is mandatory under section 189A of the Atomic Energy Act of 1954, as amended (the Act) and the Energy Reorganization Act of 1974.¹ The provisions are also applicable to proceedings for the issuance of operating licenses for such facilities, except as the context would otherwise indicate, or except as indicated in section VIII. Section VIII sets out the procedures specifically applicable to operating license proceedings. The Statement reflects the Commission's intent that such proceedings

*In the event of any conflict between the provisions of this appendix and any section of this part, the section governs.

¹Except as the context may otherwise indicate, this statement is also generally applicable to licensing proceedings of the type described in the statement which may be conducted by a hearing examiner as the presiding officer.

be conducted expeditiously and its concern that its procedures maintain sufficient flexibility to accommodate that objective. This position is founded upon the recognition that fairness to all the parties in such cases and the obligation of administrative agencies to conduct their functions with efficiency and economy, require that Commission adjudications be conducted without unnecessary delays. These factors take on added importance in nuclear power reactor licensing proceedings where the growing national need for electric power and the companion need for protecting the quality of the environment call for decision making which is both sound and timely. The Commission expects that its responsibilities under the Atomic Energy Act of 1954, the National Environmental Policy Act of 1969 and other applicable statutes, as set out in the statement which follows, will be carried out in a manner consistent with this position in the overall public interest.

Atomic safety and licensing boards are appointed from time to time by the Commission or the Chairman of the Atomic Safety and Licensing Board Panel to conduct hearings in licensing cases under the authority of section 191 of the Act. Section 191 authorizes the Commission to establish one or more atomic safety and licensing boards to conduct public hearings and to make intermediate or final decisions in administrative proceedings relating to granting, suspending, revoking or amending licenses issued by the Commission. It requires that each board consist of one member who is qualified in the conduct of administrative proceedings and two members who have such technical or other qualifications as the Commission deems appropriate to the issues to be decided. Members of each board may be appointed by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel from a panel selected from private life, the staff of the Commission or other Federal agencies.

An Atomic Safety and Licensing Board may at its discretion appoint special assistants to the Board from the membership of the Atomic Safety and Licensing Board Panel established by the Commission. These special assistants are to be employed to facilitate the hearing process and improve the quality of the record produced for review. The special assistants may serve as technical interrogators in their individual fields of expertise, alternate Atomic Safety and Licensing Board members to sit with the Board and participate in the evidentiary sessions on the issue for which the alternate members were designated, Special Masters to hear evidentiary presentations by the parties on specific technical matters upon the consent of all parties, or informal consultants to brief the board prior to the hearing on the general technical background of subjects involving

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

RALPH L. TETRICK

(Denial of Senior Reactor Operator's
License)

Docket No.(s) 55-20726-SP

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing DSB LTR TO TETRICK RE FILING.. have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

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Dated at Rockville, Md. this
12 day of February 1997


Office of the Secretary of the Commission