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AEC-R 4/38

January 10, 1966

COPY NO. _____

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ATOMIC ENERGY COMMISSION

PROPOSED AMENDMENT TO PART 2 - PROPOSED
STATEMENT OF GENERAL POLICY PERTAINING TO
CONDUCT OF PROCEEDINGS BY ATOMIC SAFETY AND
LICENSING BOARDS

Note by the Secretary

1. The Director of Regulation has requested that the attached report be circulated for consideration by the Commission in conjunction with AEC-R 4/39 and AEC-R 43/6, at the Meeting scheduled for Wednesday, January 12, 1966.

2. This paper supersedes AEC-R 4/37 which was considered at Regulatory Meeting 229 on January 5, 1966. At that time, the Commission noted staff would revise the proposed amendment and supporting material on the basis of the discussion at the Meeting and on the basis of additional guidance received individually from Commissioners Ramey and Palfrey.

3. The Director of Regulation has advised that, in response to Commissioner Tape's request at Regulatory Meeting 229 on January 5, 1966, a concise comparison of the Regulatory Review Panel recommendations with actions already effective and proposed by staff will be circulated to the Commission separately.

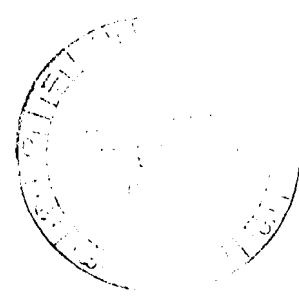
W. B. McCool

Secretary

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ATOMIC ENERGY COMMISSION

PROPOSED AMENDMENTS TO PART 2, PROPOSED STATEMENT OF
GENERAL POLICY PERTAINING TO CONDUCT OF PROCEEDINGS
BY ATOMIC SAFETY AND LICENSING BOARDS AND
MISCELLANEOUS AMENDMENTS TO PARTS 2,
50, 55, AND 115

Report to the Commission by the
Director of Regulation

THE PROBLEM

1. To consider publication for public comment of (a) proposed amendments to Part 2 and a proposed statement of general policy respecting the conduct of proceedings by atomic safety and licensing boards, which would be incorporated into Part 2 as an appendix, to implement the major recommendations of the Regulatory Review Panel and (b) proposed clarifying amendments to Parts 2, 50, 55, and 115 relating to the information necessary for the issuance of provisional construction permits or authorizations and the terms used to describe the applicant's and staff's hazards analyses.

BACKGROUND AND SUMMARY

2. On July 14, 1965, the Regulatory Review Panel submitted its report concerning AEC reactor licensing procedures for power and test reactors. That report included recommendations for a number of changes in AEC licensing procedures.

3. This paper considers implementation of the following recommendations of the Regulatory Review Panel: Recommendation D-3, Notices Prior to Hearings; Recommendation E-1, The Function of Atomic Safety and Licensing Boards; Recommendation E-2, Prehearing Conferences; Recommendation E-3, Conduct of Hearings; the first

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three items under Recommendation E-4, Action by the Hearing Board; and Recommendation E-5, Composition of Atomic Safety and Licensing Boards.

Recommendations of the Regulatory Review Panel

4. Recommendations D-3, Notices Prior to Hearings; E-1, The Function of Atomic Safety and Licensing Boards; and E-4(1), Action by the Hearing Board (initial decision). Various alternative ways of implementing these recommendations, which relate to the conduct of mandatory hearings, have been considered (Director of Regulation's Memorandum of October 8, 1965; General Counsel's Memorandum and legal analysis of October 11, 1965). The procedure proposed in this paper is to set out, in the notice of hearing, the findings on the issues necessary to support the issuance of a provisional construction permit for a power or test reactor or other production or utilization facility for which a hearing is required which the Director of Regulation proposes to make and the form of permit which he proposes to issue. (If any case should arise where the Director of Regulation opposes the application and the applicant desires a hearing, the notice of hearing would be essentially the same as that presently used.) In a contested proceeding,* the issues before the board would be essentially the same as those presently set out in notices of hearing (which reflect the requirements of § 50.35(a) and 50.40 of Part 50) and the findings necessary to support the issuance of a permit would be made by the board after whatever review it considered necessary

* The term "contested proceeding" as used in this paper, will have the same definition as that set out in the proposed amendment to 10 CFR § 2.4 in AEC-R 43/6, Proposed Amendments to 10 CFR Part 2, "Rules of Practice," To Modify Restrictions on Intra-Agency Communication in Initial Licensing Proceedings, which is being considered concurrently with this paper.

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to resolve the controverted matters and to decide those issues. As to uncontroverted matters, the board would ascertain whether the application and the record of the proceeding is sufficient and the staff's review has been adequate to support the findings. In a proceeding which is not contested, the issues to be considered by the board would be whether or not the application and the record in the proceeding contain sufficient information, and the staff's review has been adequate, to support the proposed findings and the issuance of the provisional construction permit. A form of notice of hearing, which would be used when the application and grant of a provisional construction permit are not opposed by the staff, is attached as Appendix "B".

In cases which are not contested, the boards would be expected to satisfy themselves on the issues specified in the notice of hearing, would not be required or expected to duplicate the reviews already performed by the regulatory staff and the ACRS and would be authorized to rely on the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. The implementation of these recommendations would be accomplished by a proposed amendment to § 2.104 of Part 2 and by redefining the board's function in a statement of general policy which would be appended to Part 2, all of which are set out in a notice of proposed rule making (Appendix "C").

5. Recommendations E-2, Prehearing Conferences; E-3, Conduct of Hearings; E-4(3), Action by the Hearing Board (expedited effectiveness); and E-5, Composition of Atomic Safety and Licensing Boards. The Panel's recommendations with respect to prehearing conferences (E-2) and the conduct of hearings (E-3) would be generally implemented by inclusion in the proposed statement of general policy, which would be appended to Part 2 (Appendix "C").

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of provisions to carry out those recommendations. The recommendation for modifying the Commission's regulations to permit immediate effectiveness of initial decisions authorizing the issuance or amendment of construction permits without a specific motion and to require the Director of Regulation to issue the permit within ten days of the issuance of the initial decision (E-4(3)) would be implemented by a proposed amendment to § 2.764 of Part 2, set out in Appendix "C". The recommendation with respect to the appointment of an alternate board member (E-5) would be implemented by a proposed amendment to § 2.721 of Part 2 and provisions in the proposed policy statement to be appended to Part 2, set out in Appendix "C".

6. A detailed discussion of the Panel's recommendations considered in this paper is attached as Appendix "A".

7. The statement of general policy, which is set out in Appendix "C", is based in large part upon the outline for the conduct of proceedings by atomic safety and licensing boards which was released for publication in Press Release No. F-240, November 25, 1963. Necessary changes have been made in accordance with the preceding discussion. The policy statement would be applicable to all proceedings conducted by boards involving the issuance or amendment of construction permits or licenses for facilities for which a hearing is mandatory under the Act.

The procedures outlined in the statement of general policy are consistent with the provisions of Part 2, Rules of Practice, as proposed to be amended. No changes in other parts of the Commission's regulations are deemed necessary to accomplish implementation of the Panel's recommendations as outlined above.

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8. It is the intention of the Director of Regulation to hold a conference with interested persons in connection with the above-described proposed amendments and statement of general policy.

Miscellaneous Amendments

9. In addition to the proposed amendments and statement of general policy discussed in the preceding paragraphs, the notice of proposed rule making (Appendix "C") includes proposed amendments to Parts 2, 50, 55 and 115 which were the subject of AEC-R 2/48, considered by the Commission at Regulatory Meeting 215 on June 2, 1965. Action was deferred pending receipt of the Regulatory Review Panel's report. The amendments proposed in AEC-R 2/48 would have (a) clarified the Commission's requirements, as set out in § 50.35(a)(1) and (2) of Part 50, as to findings needed to support the issuance of a provisional construction permit or provisional construction authorization and (b) substituted "safety analysis report" for "hazards summary report" in Parts 50 and 115. Appendix "C" includes the substance of those proposed amendments. In addition, it includes (1) amendments to five other provisions in the regulations (§§ 2.105, 2.106, 50.59(d), 55.20 and 115.47) where equivalent phrases are used and (2) further clarifying amendments to § 50.35(a) with respect to the description of the information needed to support the issuance of any construction permit or authorization.

STAFF JUDGMENTS

10. The Office of the General Counsel concurs in the recommendation of this paper. The Office of Congressional Relations concurs in the draft letter to the Joint Committee on Atomic Energy. The Division of Public Information prepared the draft public announcement.

RECOMMENDATION

11. The Director of Regulation recommends that the Atomic Energy Commission:

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a. Approve publication of the proposed amendments to Parts 2, 50, 55 and 115 and the proposed statement of general policy to be appended to Part 2, in the form of Appendix "C", allowing 60 days for public comment;

b. Note that the Joint Committee on Atomic Energy will be informed of the proposed amendments and statement of general policy set out in Appendix "C", as well as the amendments proposed in AEC-R 4/39 and AEC-R 43/6, in a single letter such as Appendix "D"; and

c. Note that a public announcement, such as Appendix "E", relating to the amendments and statement of general policy proposed in Appendix "C" and those proposed in AEC-R 4/39 and AEC-R 43/6, will be issued when all three notices of proposed rule making are filed with the Federal Register.

LIST OF ENCLOSURES

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| "B" | Draft Form of Notice of Hearing To Be Used When Application for Provisional Construction Permit Is Not Opposed by Staff | 16 |
| "C" | Notice of Proposed Rule Making | 21 |
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APPENDIX "A"

CERTAIN REGULATORY REVIEW PANEL RECOMMENDATIONS
AND THEIR IMPLEMENTATION

This appendix discusses the substance and proposed implementation of the following recommendations of the Regulatory Review Panel: Recommendation D-3, Notices Prior to Hearing; Recommendation E-1, The Function of Atomic Safety and Licensing Boards; Recommendation E-2, Prehearing Conferences; Recommendation E-3, Conduct of Hearings; the first three items under Recommendation E-4, Action by the Hearing Board; and Recommendation E-5, Composition of Atomic Safety and Licensing Boards.

1. Recommendation D-3 Notices Prior to Hearings

The Panel recommended that "upon completion of the regulatory staff review and coordination with the ACRS as required, the Director of Regulation should come to a conclusion as to whether or not a construction permit should be issued. This conclusion should be announced in the Federal Register in the form of an intention either to issue or deny the requested construction permit, subject to a showing of cause at a public hearing why the announced intention should be set aside. Where practical, this same notice should also be used to announce the public hearing." It is believed that the purposes contemplated by the Panel can be essentially fulfilled, when considered in connection with other recommended changes in procedure, the notice and the function of the boards, without casting the notice of hearing in the form of an order to show cause. This would be accomplished by providing, in proceedings involving an application for a construction permit subject to the mandatory hearing requirements of the Act, for a notice of hearing which would announce the Director of Regulation's proposed findings in support of the application. Should the staff oppose the

application, but the applicant nonetheless request a hearing, a different form of notice would be used. A form of notice of hearing to be used when the application is not opposed by the staff (Appendix "B") and a proposed amendment to § 2.104 of Part 2 set out in a notice of proposed rule making (Appendix "C") would implement that recommendation.

2. Recommendation E-1 The Function of Atomic Safety and Licensing Boards

The Panel recommended, in this respect, that:

"The function of the Atomic Safety and Licensing Boards in facility licensing cases should be redefined specifically to recognize that a board cannot undertake, de novo, an independent technical review of the safety of a proposed facility. Rather, the function of the board should constitute the following:

- (a) Determination on the record whether or not a proper application containing sufficient technical and other information has been filed by the applicant;
- (b) Determination whether or not a review of the application has been made by the regulatory staff, and in some cases, the ACRS, which is adequate to support either the granting or denying of a construction permit or license;
- (c) Provision of a formal public hearing opportunity for any affected person to show cause why the construction permit or license should or should not be issued in accordance with the previously announced intention of the Director of Regulation; and
- (d) In contested cases, determination as to which of the opposing arguments should prevail."

It is proposed to implement this recommendation with respect to uncontested cases for construction permits where a hearing is

required by the Act, by narrowing the issues in such cases (by amendment to § 2.104 of Part 2), and by clarifying the board's functions in the proposed statement of general policy which would be appended to Part 2 (included in Appendix "C" attached hereto). The proposed amendment to § 2.104 would provide that in such uncontested cases, the board would determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support both the findings proposed to be made by the Director of Regulation as set forth in the notice of hearing and the issuance of a provisional construction permit in the form proposed. The proposed amendment would also provide that the board, in such uncontested cases, will not conduct a de novo review of the application. The proposed statement of general policy would emphasize that, in such cases, boards are neither expected nor required to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff, and the applicant and the uncontroverted conclusions of the ACRS. Should there appear to be a need for additional information in the technical presentation, the proposed policy statement indicates that the board would be expected to request the applicant or the staff to supplement the presentation.

In contested cases, the issues before the board would be defined to be essentially those now set out in notices of hearings in such cases and the board itself would make the findings in support, or denial, of a construction permit. Its principal functions in contested cases would be to determine the controversies between the parties, to make findings pertinent to the application, and to order issuance of, or deny, the provisional construction permit. Even in a contested case,

however, the board would not conduct a de novo review of matters which are not in controversy. As to those matters it would be limited to ascertaining whether the application and the record are sufficient, and the staff review has been adequate, to support its findings on the issues.

3. Recommendation E-2 Prehearing Conferences

The Panel recommended that the function of prehearing conferences in all cases be expanded, and that a conference be held in every case to settle matters of procedure and to attempt to define any substantive issues. To implement the recommendation, the statement of general policy to be appended to Part 2 (Appendix "C") stresses the valuable function of the prehearing conference and encourages the use of such a conference in all proceedings before an atomic safety and licensing board, although the requirement is not incorporated in a formal rule. The uses which may be made of the prehearing conference to expedite the proceeding by familiarizing the board with the general nature of the case; focusing attention on important safety questions or particular areas of special interest to the board; defining or clarifying the issues; identifying the witnesses to be presented by the parties or requested by the board; specifying the order and method of presentation of their testimony; scheduling the exchange of prepared testimony and documentary evidence; determining the contents of the decisional record and the method of designating exhibits; discussing procedures to be followed at the hearing; and arriving at such agreements as will aid in the disposition of the proceeding are noted. In particular, the expected use of the prehearing conference to identify and discuss the significant safety issues involved in a proceeding and to identify what matters are in controversy is pointed out.

4. Recommendation E-3 Conduct of Hearings

The Panel's recommendation is that during the conduct of public hearings greater emphasis should be placed on (1) the exclusion or limitation of extraneous and irrelevant issues over which the Commission has no jurisdiction, (2) the preservation of

continuity of the hearing, and (3) the use of the hearing as a legitimate instrument to enhance the public's impression of the regulatory staff's competence and objectivity.

The proposed statement of general policy to be appended to Part 2 would include provisions which would generally carry out these recommendations. For example, the policy statement discusses the matter of petitions for leave to intervene. It emphasizes that the board should bear in mind that in granting such a petition, it should not change or enlarge the issues to matters beyond the jurisdiction of the Commission. The requirement of Part 2 that a petition for intervention be filed at least seven days prior to the start of the hearing, and that time should be extended only for good cause, is pointed out. The statement emphasizes that evidence on matters irrelevant to the proceeding, or outside the jurisdiction of the board or the Commission, should be excluded. It is also indicated that where a recess is necessary to obtain additional evidence, the recess should be postponed until all available evidence on all issues has been received.

5. Recommendation E-4 Action by the Board

The recommendation of the Panel with respect to action by boards considered in this paper is:

- (1) The initial decision should consist of either a determination that the Director of Regulation's proposed action be set aside, with an order to that effect, or a determination that no cause has been shown why this should be done;
- (2) A time limit should be established for action by the board; and
- (3) The present machinery for granting expedited effectiveness should be modified.

Item (1) of this recommendation would be implemented primarily by limiting the role of the board in uncontested cases where a mandatory hearing is held, by the proposed amendment to § 2.104 of Part 2 (Appendix "C"). Thus, as discussed at page 7 above, in such proceedings, the notice of hearing having set out the Director of Regulation's proposed findings in support of the issuance of a provisional construction permit (which would also be set out), the function of the board would be to determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. The proposed policy statement (Appendix A to Part 2) points out that if the board finds affirmatively on those issues in its initial decision, the Director of Regulation will, upon his making the proposed findings, issue the permit. If the board finds negatively on those issues, the Director of Regulation will deny the application.

On the other hand, in contested cases involving an application for a construction permit, the proposed amendment to § 2.104 of Part 2 would provide that the notice of hearing will specify a number of issues to be considered by the board at the hearing which are essentially the same as those presently set out in notices of hearing, and reflect the requirements of §§ 50.35(a) and 50.40 of Part 50. The board's action would be to make findings on all of those issues in the initial decision and include the reasons or basis for its findings. On the basis of those findings, the initial decision would state the board's determination whether or not a construction permit should be issued and, if so, in what form.

The above description of the board's action departs from the literal recommendation of the Panel, principally in that a show-cause type of procedure is not contemplated. The General Counsel, in his legal analysis of the various alternatives considered to implement the Panel's recommendations, expressed the view that if the board's decision does not go beyond a determination of whether cause has been shown to set aside the Director of Regulation's proposed action, he would be unable to conclude that the requirements of subsection 8(b) of the Administrative Procedure Act had been met, in the absence of waiver by the parties.

To implement item (2) of this recommendation, a suggested time for action by boards is included in the provisions of the proposed statement of general policy to be appended to Part 2 (Appendix "C"). The policy statement indicates that it is expected that the initial decision will ordinarily be rendered 15 days after the board's receipt of proposed findings of fact and conclusions of law filed by the parties in an uncontested case, and 45 days after that date in a contested case. The Panel suggested dates of 15 and 45 days after the close of the hearing, respectively. It is considered that a limit based upon the date of receipt of proposed findings is preferable, in order to enable the board to consider fully the entire record.

To implement item (3) of Recommendation E-4, a proposed amendment to § 2.764 of Part 2 is set out in Appendix "C" which would revise that section to state that initial decisions authorizing the issuance or amendment of construction permits or authorizations shall be immediately effective, unless the presiding officer finds that good cause has been shown by a

party why the initial decision should not become immediately effective. The initial decision would remain subject to review and further order by the Commission upon exceptions filed by a party or review on its own motion. The proposed amendment would also require the Director of Regulation to issue the permit within ten days of the issuance of the initial decision, notwithstanding the filing of exceptions. In making such immediate effectiveness automatic, construction delays which are not required by radiation safety or policy considerations will be avoided. (Since the adoption of present § 2.764 of Part 2, most applicants for construction permits have requested expedited effectiveness and in no case has the Commission delayed issuance of the permit.) The applicant would, of course, bear the risk that the initial decision would be subject to Commission review for the 45-day period following issuance and thus, that the initial decision authorizing construction might be set aside.

It should be noted, however, that the Commission had before it a somewhat similar proposal for expedited effectiveness prior to the time when § 2.764 of Part 2 was published for public comment (AEC-R 4/21). The Commission at that time determined that initial decisions authorizing issuance of construction permits should not be made effective for a period of ten days. The Commission indicated at Regulatory Meeting 166 (February 6, 1963), that it wished to provide such a ten-day period, presumably in order to permit the Commission to decide whether it wished to undertake formal review without having the reactor being under construction before the expiration of the period provided for review by the Commission. Accordingly, the proposed rule as

published (and later adopted) included such a provision for delayed effectiveness.

6. Recommendation E-5 Composition of Atomic Safety and Licensing Boards

The Panel recommended that consideration be given to the appointment of a third technical board member as an alternate in future cases. A proposed amendment to § 2.721 of Part 2 and appropriate provisions in the proposed policy statement to be appended to Part 2, which describes in some detail how such an alternate would be appointed and would function, would implement this recommendation.

The proposed amendment would provide that the Commission may designate a technically qualified alternate for a board. Such an alternate will receive copies and become familiar with the application and other documents filed by the parties and will be encouraged, but not required, to attend the prehearing conference and hearing. If the parties consent, the alternate may question witnesses. He may also submit questions for witnesses to the board. Although he will not participate as a member of the board, it should be noted that AEC-R 43/6 (considered simultaneously herewith) provides that in initial licensing proceedings, the alternate, like any member of the panel from which the Commission appoints atomic safety and licensing boards, may be consulted by the board on any fact in issue pursuant to § 2.719 of Part 2, as proposed to be amended. In the event that a technically qualified member of a board becomes unavailable before the board renders its decision, the board will notify the Commission and the alternate. Upon receipt of such a notification, the alternate becomes a member of the board and participates fully in all duties of the board, including making the initial decision.

APPENDIX "B"

FORM OF NOTICE OF HEARING TO BE USED WHEN
APPLICATION FOR PROVISIONAL CONSTRUCTION
PERMIT IS NOT OPPOSED BY STAFF

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

In the Matter of

}

Docket No.

NOTICE OF HEARING ON APPLICATION
FOR PROVISIONAL CONSTRUCTION PERMIT

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, "Rules of Practice," notice is hereby given that a hearing will be held at _____ on _____ in _____ to consider the application filed under § 104 b. of the Act by _____, for a provisional construction permit for a _____ designated to operate at _____ to be located at _____.

The hearing will be conducted by the Atomic Safety and Licensing Board designated by the Atomic Energy Commission consisting of _____, _____, and _____, as members of the board. _____ has been designated as a technically qualified alternate.

The Director of Regulation proposes to make affirmative findings on Item Numbers 1 - 3 and a negative finding on Item 4 specified below as the basis for the issuance of a provisional construction permit to the applicant substantially in the form proposed in Appendix "A" hereto.

1. Whether in accordance with the provisions of 10 CFR § 50.35(a)

- (a) The applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;^{1/}
- (b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;
- (c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components; and
- (d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;

^{1/} The Commission has issued for interim guidance "General Design Criteria for Nuclear Power Plant Construction Permits." See press release number H-252 dated November 22, 1965.

2. Whether the applicant is technically qualified to design and construct the proposed facility;
3. Whether the applicant is financially qualified to design and construct the facility;
4. Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

In the event that this proceeding is not a contested proceeding, the Board will, without conducting a de novo review of the application, consider the issues of whether the application and the record of the proceeding contain sufficient information, and the review by the Commission's regulatory staff has been adequate, to support the findings proposed to be made and the provisional construction permit proposed to be issued by the Director of Regulation.

In the event that this proceeding becomes a contested proceeding as defined by § 2.4 of the Commission's "Rules of Practice," 10 CFR Part 2, the Board will consider and initially decide, as the issues in this proceeding, Item Numbers 1 through 4 above as the basis for determining whether a provisional construction permit should be issued to the applicant and, in considering such issues, will not conduct a de novo review of matters not in controversy, but will, as to such matters, determine the sufficiency of the application and the record of the proceeding, and the adequacy of the review of the application by the Commission's regulatory staff, to support affirmative findings on Item Numbers 1, 2 and 3 and a negative finding on Item Number 4.

The application and the report of the Commission's Advisory Committee on Reactor Safeguards (ACRS) will be available for public inspection in the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C. Copies of the ACRS report may

be obtained by request to the Director of the Division of Reactor Licensing, United States Atomic Energy Commission, Washington, D. C. 20545

Petitions for leave to intervene, pursuant to the provisions of § 2.714 of the Commission's "Rules of Practice," must be received in the Office of the Secretary, United States Atomic Energy Commission, Germantown, Maryland, or the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C., not later than _____, or in the event of a postponement of the specified hearing date, at such time as the Board may specify.

Any person who wishes to make an oral or written statement setting forth his position on the issues specified, but who does not wish to file a petition to intervene, may request permission to make a limited appearance pursuant to the provisions of § 2.715 of the Commission's "Rules of Practice." Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary, United States Atomic Energy Commission, Washington, D. C. 20545, by _____.

Answers to this notice, pursuant to the provisions of § 2.705 of the Commission's "Rules of Practice," must be filed by the applicants on or before _____.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary, United States Atomic Energy Commission, Washington, D. C. 20545, or may be filed by delivery to the Office of the Secretary, United States Atomic Energy Commission, Germantown, Maryland, or the Commission's Public Document Room, 1717 H Street, N. W., Washington, D. C.

Pending further order of the Board, parties are required to file pursuant to the provisions of § 2.708 of the Commission's "Rules of Practice," an original and twenty conformed copies of each such paper with the Commission.

UNITED STATES ATOMIC ENERGY COMMISSION

By: _____
W. B. McCool
Secretary to the Commission

Dated at _____
this _____ day of _____, 1966.

APPENDIX "C"

ATOMIC ENERGY COMMISSION

10 CFR Parts 2, 50, 55, and 115

RULES OF PRACTICE
LICENSING OF PRODUCTION AND UTILIZATION FACILITIES
OPERATORS' LICENSES
PROCEDURES FOR REVIEW OF CERTAIN NUCLEAR REACTORS
EXEMPTED FROM LICENSING REQUIREMENTS

Amendments to Rules of Practice;
Statement of General Policy; Miscellaneous Amendments

The Commission has under consideration several amendments of its Rules of Practice, 10 CFR Part 2, the adoption of a statement of general policy to be appended to that part and miscellaneous amendments of Parts 2, 50, 55, and 115. It is expected that the amendments will expedite the Commission's facility licensing procedure and clarify certain provisions in existing regulations.

Licensing hearings involving the construction and operation of nuclear reactors and other production and utilization facilities are ordinarily conducted by atomic safety and licensing boards whose establishment by the Commission was authorized by section 191 of the Atomic Energy Act of 1954, as amended (the Act). The Commission has authorized such boards to conduct public hearings and make initial decisions in proceedings relating to the granting, suspending, revoking, or amending of licenses or authorizations issued by the Commission. Rules applicable to licensing proceedings conducted by boards (and by hearing examiners) are set forth in 10 CFR Part 2.

The amendments to Part 2 and policy statement under consideration while not confined to, reflect several of the recommendations made by a seven-member Regulatory Review Panel, appointed by the Commission to study (1) the programs and procedures function in the licensing and regulation of reactors and (2) the decision-making process in the Commission's regulatory program. The Panel's report included a number of recommendations in both

areas, particularly in respect to the conduct of "uncontested" licensing proceedings at the construction permit stage.

Proposed Amendments to Part 2

The proposed amendment of § 2.104 which follows would add a new paragraph (b) to set out the issues which will be specified in the notice of hearing on applications for a construction permit for a facility under section 103 or section 104 b. of the Act or for a testing facility under section 104 c. of the Act. If such a proceeding is not contested, a de novo review of the application would not be conducted, and the board would determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, both to support the findings proposed to be made by the Director of Regulation, which are necessary under the Act and the Commission's regulations for the issuance of a provisional construction permit, and the issuance of the provisional construction permit as proposed by the Director of Regulation. If such a proceeding is "contested,"* the board will decide all matters in controversy, but will not conduct a de novo review of matters not in controversy. As to such matters the board will determine the sufficiency of the application and the record of the proceeding, and the adequacy of the review of the application by the Commission's regulatory staff, to support findings necessary under the Act and the Commission's regulations for the issuance of a provisional construction permit.

The proposed amendment of § 2.721 would set out the procedure followed by the Commission in designating a technically qualified alternate for an atomic safety and licensing board and the effect of such designation. The amendment would specify that the alternate may, with the

*A "contested proceeding" would be defined in the Commission's "Rules of Practice" by a proposed amendment to § 2.4 of 10 CFR Part 2, issued simultaneously herewith.

consent of the parties to the proceeding, examine witnesses, but he would not otherwise participate in the activities of the board until he becomes a member of the board. If one of the two technical members of the board subsequently becomes unavailable, the board would designate the alternate to serve as a member of the board.

Amendment of § 2.764, Expedited effectiveness of initial decision directing issuance or amendment of construction permit, is also proposed. The present rule provides that initial decisions directing the issuance or amendment of construction permits and authorizations may, upon written motion and after specified findings are made by the presiding officer, be made effective ten days after the date of issuance; the rule also provides that effectiveness may be stayed pending filing of a petition for review of the provision for expedited effectiveness. The Commission has concluded, however, that, except where good cause has been shown by a party why the initial decision should not become immediately effective, its licensing procedures can be expedited by providing for an initial decision which directs the issuance or amendment of a construction permit or authorization to become effective immediately without the necessity of filing a motion, subject, of course, to Commission review. The proposed amendment which follows would implement that conclusion and would also provide that the Director of Regulation must issue the permit authorized within ten days from the effective date of the initial decision.

Proposed Statement of General Policy -
Appendix A to Part 2

Certain recommendations of the Regulatory Review Panel do not require or lend themselves, to inclusion as formal rules in the Commission's Rules of Practice. They have, however, been incorporated in a proposed statement of general policy (Appendix A to Part 2), which would explain the procedures to be followed in the conduct by atomic safety and licensing boards of proceedings involving applications for construction permits on which the Act requires a hearing.

Proposed Amendments to Parts 50, 55 and 115

The Commission is proposing minor or clarifying amendments of 10 CFR Parts 50 and 115 with respect to (1) the findings necessary to support the issuance of a provisional construction permit or authorization and (2) the terms used to designate the documents which are now termed (a) the "hazards report" submitted by applicants for permits or licenses under Part 50 or authorizations under Part 115 and (b) the "hazards analysis" prepared by the Commission's regulatory staff.

At present, § 50.35(a) of Part 50 and § 115.24(a) of Part 115 authorize issuance of a provisional construction permit or authorization if, among other things, the Commission finds that "the applicant *** has identified the major features or components on which technical information is required" (subparagraph (1)), that "the omitted technical information will be supplied" (subparagraph (2)), and that "the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve the safety questions, if any, with respect to those features or components which require research and development" (subparagraph (3)). It is proposed that § 50.35(a) (1), (2) and (3) and § 115.24(a) (1), (2) and (3) be amended to clarify the point that certain design and technical information need not be submitted until the operating license stage.

In addition, the Commission proposes to amend Parts 50 and 115 (and Parts 2 and 55) to substitute the term "safety analysis report" for "hazards summary report" and "safety analysis" for "hazards analysis" (or the equivalent) where they appear. It is believed that the terms "safety analysis report" and "safety analysis" are more accurate descriptions of those documents. All of these proposed amendments are clarifying in nature and have no substantive effect on existing construction permittees under Part 50 or holders of authorizations under Part 115.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, notice is hereby given that adoption of the following amendments of 10 CFR Parts 2, 50, 55, and 115 and of the proposed statement of general policy is contemplated. All

interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments and statement of general policy should send them to the Secretary, United States Atomic Energy Commission, Washington, D. C. 20545, within sixty days from publication of this notice in the FEDERAL REGISTER. Comments received after that time will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments filed within the period specified.

1. Paragraph (b) of § 2.104 of 10 CFR Part 2 is redesignated paragraph (c) and a new paragraph (b) is added to § 2.104 to read as follows:

§ 2.104 Notice of hearing.*

(b) In the case of an application for a construction permit for a facility on which the Act requires a hearing, the notice of hearing will, unless the Commission determines otherwise, state, in implementation of subparagraph (a)(3) of this section:

(1) That, if the proceeding is a contested proceeding, the presiding officer:

(i) Will consider the following issues:

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

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

*In the amendments proposed in this document, additions are underscored and deletions are bracketed.

**The Commission has issued for interim guidance "General Design Criteria for Nuclear Power Plant Construction Permits." See press release No. H-252, dated November 22, 1965.

- (2) Such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration will be supplied in the final safety analysis report;
- (3) Safety features or components, if any, which require research and development, have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve any safety questions associated with such features or components;
- (4) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;
- (b) Whether the applicant is technically qualified to design and construct the proposed facility;
- (c) Whether the applicant is financially qualified to design and construct the proposed facility;
- (d) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

(1i) Will, in considering the issues set out in subdivision (i) of this subparagraph, not conduct a de novo review of matters not in controversy but will, as to such matters, determine the sufficiency of the application and the record of the proceeding, and the adequacy of the review of the application by the Commission's regulatory staff, to support affirmative findings on Issues (a), (b) and (c) and a negative finding on Issue (d).

(2) That, in the event the proceeding is not a contested proceeding, the presiding officer will, without conducting a de novo review of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support affirmative findings on Issues (a), (b) and (c) specified in subdivision (i) of subparagraph (1) of this paragraph (b) and a negative finding on Issue (d) specified in subdivision (i) of subparagraph (1) of this paragraph (b) proposed to be made and the issuance of the provisional construction permit proposed by the Director of Regulation.

2. Subparagraphs 2.105(b)(2) and 2.106(b)(2) of 10 CFR Part 2 are amended by substituting the words "safety analysis" for "safeguards analysis" where they appear.

3. Section 2.721 of 10 CFR Part 2 is revised to read as follows:

§ 2.721 Atomic safety and licensing boards.

(a) The Commission may from time to time establish one or more atomic safety and licensing boards, each composed of three members, two of whom will be technically qualified and one of whom will be

qualified in the conduct of administrative proceedings, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate.

- (b) The Commission may designate a technically qualified alternate for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a technically qualified member of a board becomes unavailable before the initial decision is rendered, the board will so notify the Commission and will notify the alternate who will, as of the date of such notification, serve as a member of the board. If the member of a board, who is qualified in the conduct of administrative proceedings, becomes unavailable before the initial decision is rendered, the Commission may designate another such member. An alternate may, with the consent of the parties to a proceeding, examine witnesses, but he shall not otherwise actively participate as a member of the board until he becomes a member.

- (c) An atomic safety and licensing board shall have the duties and may exercise the powers [in any such case] of a presiding officer as granted by § 2.718 and otherwise in this part. At any time when such 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 hearing examiner may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it.

4. Section 2.764 of 10 CFR Part 2 is revised to read as follows:

§ 2.764 [Expedited] Immediate effectiveness of initial decision directing issuance or amendment of construction permit.

- (a) An initial decision directing the issuance or amendment of a construction permit or construction authorization [may, upon written motion, be made effective ten (10) days after issuance when] shall be effective immediately upon issuance unless the presiding officer finds that [(1) no significant

question of fact, law or discretion has been presented; (2) that the record clearly warrants such action and shows that denial of the motion will result in substantial economic injury or be detrimental to the public interest.] good cause has been shown by a party why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon exceptions* filed by any party pursuant to § 2.762 of this part or upon its own motion.

(b) [/If any party opposes the motion for expedited effectiveness of the initial decision, the presiding officer may stay its effectiveness pending the filing, within five (5) days after its issuance, of a petition for review of the provision for expedited effectiveness, and thereafter until decision by the Commission on the petition for review.] The Director of Regulation, notwithstanding the filing of exceptions, shall issue a construction permit or authorize, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

5. A statement of general policy is appended to 10 CFR Part 2 to read as follows:

*While Part 2 now provides for review by petition which the Commission in its discretion may or may not grant (§ 2.762), the Commission has published for public comment proposed amendments to Part 2 which would provide for appeals from initial decisions as of right upon filing of exceptions.

APPENDIX A. STATEMENT OF GENERAL POLICY: CONDUCT OF PROCEEDINGS FOR THE ISSUANCE OF CONSTRUCTION PERMITS FOR PRODUCTION AND UTILIZATION FACILITIES FOR WHICH A HEARING IS REQUIRED UNDER SECTION 189 a. OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED.

The following statement of general policy explains in detail the procedures which the Atomic Energy 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 189 a. of the Atomic Energy Act of 1954, as amended (the Act).*

Such proceedings are frequently uncontested in that the application for a construction permit is not opposed by an intervenor nor are there any controversies between the Commission's regulatory staff and the applicant concerning the issuance of the permit or the terms and conditions thereof. The provisions of Sections I through V of the following Statement are, for the sake of convenience, set out in the framework of the uncontested proceeding. They are applicable also, however, to the contested proceeding except as the context would otherwise indicate, or except as indicated in Section VI. Section VI sets out the procedures specifically applicable to the contested proceeding.

Atomic safety and licensing boards are appointed from time to time by the Atomic Energy Commission to conduct hearings in licensing cases under the authority of section 191.

* Except as the context may otherwise indicate, this Statement is also generally applicable to the conduct of proceedings for the issuance of operating licenses for such facilities, as well as to authorization proceedings conducted under Part 115, Procedures for Review of Certain Nuclear Reactors Exempted from Licensing Requirements, and to licensing proceedings of the type described in the Statement which may be conducted by a hearing examiner as the presiding officer.

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 or authorizations issued by the Commission. It requires that each board consist of two members who are technically qualified and one member who is qualified in the conduct of administrative proceedings. Members for each board may be appointed by the Commission from a panel selected from private life, the staff of the Commission or other Federal agencies. -

This statement is intended as a guide to the conduct of public hearings under the mandatory hearing requirements of the Act for the information of the public and assistance of members of boards and parties to licensing proceedings. It is not all inclusive. It is intended to explain and summarize certain requirements of governing statutes, the Commission's Rules of Practice, 10 CFR Part 2, and some applicable principles of law and good practice.

I. Preliminary Matters

- (a) A public hearing is announced by the issuance of a notice of hearing signed by the Commission's Secretary, stating the nature of the hearing, its time and place and the issues to be considered. When a hearing is to be held before a board, the notice of hearing will ordinarily designate the chairman and the other members. The notice of hearing is published in the FEDERAL REGISTER at least 30 days prior to the date of hearing. In addition, a public announcement is issued by the Commission regarding the date and place of the hearing.

- (b) In fixing the time and place of any postponed hearing or of the prehearing conference the boards will take into consideration the convenience of board members, the AEC staff and other parties to the extent practicable.
- (c) The notice of hearing will, unless the staff opposes the application, include the findings which the Director of Regulation proposes to make, that is, the findings which are necessary under the Act and the Commission's regulations to support the granting of an application, and the form of provisional construction permit which he proposes to issue. The Director of Regulation will, of course, be free to arrive at a different position on the basis of new information brought out at the hearing.
- (d) The board will determine whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. The board will not conduct a de novo review of the application.
- (e) Prior to a hearing, board members should review and become familiar with:
- The record of any relevant prior proceedings in the case, including initial decisions and Commission orders.

The Advisory Committee on Reactor Safeguards (ACRS) report, the staff safety analysis, the application and all other papers filed in the proceeding.

The Commission's Rules of Practice, 10 CFR Part 2, and such other regulations or published statements of policy of the Commission as may be pertinent to the proceedings.

- (f) At any time when a board is in existence but is not actually in session, the chairman has all the powers of the board to take action on procedural matters. The chairman may have occasion, when the board is not in session, to dispose of preliminary procedural requests including, among other things, motions by parties relating to the conduct of the hearing. He may wish to discuss such requests with the other members of the board before ruling on them. No interlocutory appeal* may be taken by a party as a matter of right from a ruling of the chairman or the board. The board should refer the challenged ruling to the Commission for a final decision if, in its judgment, a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense. This authority should be exercised sparingly, and only when deemed essential in fairness to the parties or the public.

* An interlocutory appeal means an appeal to the Commission from a ruling made by the board during the time between the issuance of a notice of hearing and the issuance of the initial decision.

II. Prehearing Conference

- (a) A prehearing conference serves a vital function in defining substantive issues and in settling matters of procedure before the start of the hearing. A prehearing conference should be regarded as an informal meeting of the Board with the parties where (a) the significant safety questions can be identified and discussed, (b) any matters in controversy between the parties can be clearly identified, and (c) any preliminary matters, such as those described below, can be disposed of, in order to expedite the conduct of the public hearing. The Commission strongly encourages their use and expects that a prehearing conference will ordinarily be held in each licensing proceeding before an atomic safety and licensing board.
- (b) As authorized in § 2.752 of 10 CFR Part 2, a prehearing conference may be conducted at the direction of the Commission or presiding officer, for the purpose of familiarizing the board with the general nature of the case; facilitating and expediting the conduct of the hearing by focusing attention on important safety questions or particular areas of special interest to the board; determining whether there are any issues in controversy between the parties; identifying the witnesses to be presented by the parties or requested by the board; specifying the order and method of presentation of their testimony; scheduling the exchange of prepared testimony and documentary evidence; determining the contents of

the decisional record and the method of designating exhibits; discussing procedures to be followed at the hearing; and arriving at such agreements as will aid in the conduct and expeditious disposition of the proceeding.

- (c) The timing of the prehearing conference will depend on the nature of the case, and should be decided after preliminary study of the case. When feasible, it will assist preparation for the hearing if the prehearing conference is held well in advance of the hearing. The prehearing conference will usually be held without prior public notice, but the board may issue a notice informing the public of the time and place. Prehearing conferences are open to the public except under exceptional circumstances involving matters such as those referred to in 10 CFR §§ 2.810(a) and (b) ("company confidential" information; classified information; and certain privileged information not normally a part of the hearing record.)
- (d) A transcript of a prehearing conference is not required, although one should be prepared if a party requests that a transcript be made or if in the particular case the board considers it desirable.
- (e) It is expected that any agreements reached or decisions made at the conference will be reduced to writing and will be incorporated promptly in the formal record of the hearing without prejudice to the rights of any subsequent intervenor. In any

event, the board will be expected at the opening of the hearing to state on the record that such a conference has been held and the time and place of the meeting and the persons who attended.

- (f) The applicant, the regulatory staff and other parties will ordinarily provide each other and the board with copies of prepared testimony in advance of the hearing. A schedule may be established at the prehearing conference for exchange of prepared testimony. The applicant ordinarily files a summary of his application, including a summary description of the reactor and his evaluation of the considerations important to safety, and the staff files a safety analysis prior to the hearing. These are adopted by the testimony of witnesses sworn at the hearing. All of these documents and prepared testimony are filed in the Commission's Public Document Room and are available for public inspection.

III. The Hearing

The following procedures should be observed in the conduct of public hearings:

(a) Preliminary

- (1) A verbatim transcript will be made of the hearing.
- (2) The chairman should convene the hearing by stating the title of the proceeding and describing its nature.
- (3) He should state the date, time and place at which the prehearing conference was held, and

identify the persons participating in it. He should summarize the prehearing order, or, if there is no written prehearing order, the results of the prehearing conference.

- (4) He should explain the procedures for the conduct of the hearing. He should request that counsel for the parties identify themselves on the record, and provide them with the opportunity to make opening statements of their respective positions.
- (5) He should describe, for the benefit of members of the public who may be present, the respective roles of the board, the ACRS and the staff, and the Commission procedures for review of the decision. He should also describe the continuing review and inspection surveillance conducted by the Commission after a construction permit or an operating license has been issued.

(b) Intervention and Limited Appearances

- (1) The chairman should call attention to the provisions of 10 CFR §§ 2.714 Intervention and 2.715 Participation by a person not a party (limited appearance). He should briefly explain these provisions and the rights of persons who may qualify as intervenors or as persons to be permitted to make limited appearances. He should call attention to the provision of 10 CFR § 2.714(d) that the granting of a petition to intervene does not change or enlarge the issues specified in the notice of hearing unless expressly provided in the order allowing intervention.

- (2) The chairman should inquire of those in attendance whether there are any who wish to participate in the hearing by intervention or by limited appearance.
- (3) The board should rule on each request to participate in the hearing on either basis. The Commission's rules require that a petition for intervention be filed at least seven days prior to the start of the hearing. A board has general authority to extend the time for good cause with respect to allowing intervention.
- (4) As required by § 2.714 of 10 CFR Part 2, a person who wishes to intervene must set forth, in a petition for leave to intervene, his interest in the proceeding, how the interest may be affected by Commission action, and his contentions. After consideration of any answers, the board will rule on the petition. In any event, the board should not permit enlarging of the issues, or receive evidence from an intervenor, with respect to matters beyond the jurisdiction of the Commission.
- (5) Those permitted to intervene become parties to the proceeding. Persons permitted to make limited appearances do not become parties, but should be permitted to make statements at such stage of the proceeding as the board may consider appropriate. A person making a limited appearance may make only an oral or written statement on the

record, and may not participate in the proceeding in any other way. The board may wish to limit the length of oral statements. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance for the purpose of making a statement.

- (6) It is important that the board make clear to the members of the public seeking to participate the difference between intervention and limited appearance. An intervenor has all the rights of the applicant and the staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. Persons who make "limited appearances" do not have these privileges; they are limited to making oral statements or filing written statements. Many of these persons, however, in the course of making limited appearances will want not only to state their positions, but to raise questions which they would like to have answered. This should be permitted to the extent the questions are within the scope of the proceeding as defined by the issues set out in the notice of hearing, the prehearing conference report, and any later orders. Usually such persons should be asked to make their statements or raise their questions early in the proceeding so that the board will have an opportunity to be sure that relevant and meritorious questions are properly dealt with during the course of the hearing.

(7) It is the Commission's view that the rules governing intervention and limited appearances are necessary in the interest of orderly proceedings. The Commission also believes that through these two methods of public participation all members of the public are assured of the right to participate by a method appropriate to their interest in the matter. This should be fully explained at the beginning of the hearing. In some cases the board may feel that it must deny an application to intervene but that it can still accommodate the desire of the person involved by allowing him to make a statement and raise questions under the limited appearance rule.

(8) Boards have considerable discretion as to the manner in which they accommodate their conduct of the hearing to local public interest and the desires of local citizens to be heard. Particularly in cases where it is evident that there is local concern as to the safety of the proposed plant, boards should so conduct the hearing as to give appropriate opportunity for local citizens to express their views, while at the same time protecting the legal interest of all parties and the public interest in an orderly and efficient licensing process. Boards should give full public recognition to the fact that utilization of such opportunity is one of the important reasons why public hearings are held by the Commission and are held in the locality of interest.

- (9) In order to facilitate public understanding of the proceeding it is anticipated that the applicant (who has the burden of proof in licensing proceedings), will, at an appropriate time early in the proceeding, make an oral statement describing in terms that will be readily understood by the public, the manner in which the safety of the public will be assured, by such provisions as siting, safety features of the reactor, including engineered safeguards, etc. It may be that the "summary description of the reactor and * * * evaluation of the considerations important to safety" referred to at page 36 above, will satisfactorily serve as the basis for such oral statement.
- (10) The staff will also, early in the proceeding, make an oral statement describing the staff's evaluation of the application and the reasons for the conclusions reached by the staff.
- (11) The testimony of all witnesses will be given under oath. These witnesses may be collectively sworn at the opening of the hearing or if additional witnesses are called upon to testify at a subsequent stage they may be sworn at the time of their appearance.
- (12) There is ordinarily no need for oral recital of prepared testimony unless the board considers that some useful purpose will be served. Each witness presented by a party may be questioned by other parties and by the board. Unless

testimony is being taken on a roundtable basis or there is some occasion for clarification of testimony as rendered, the board may wish to reserve its questions until the parties have completed questioning of the witnesses, since counsel for the respective parties will generally be prepared to develop the various lines of pertinent questions.

- (13) Opportunity should be assured, on an orderly basis, for each party to comment on statements made by other parties.
- (14) The proceedings should be conducted informally, but in an orderly manner, consistent with the necessity of a clear and adequate record. The order of presenting testimony may be freely varied in the conduct of the hearing. The board may find it helpful to take expert testimony from witnesses on a roundtable basis after the receipt in evidence of prepared written testimony.
- (15) Objections may be made by counsel to any questions or any line of questioning, and should be ruled upon by the board. The board may admit the testimony, may sustain the objection, or may receive the testimony, reserving for later determination the question of admissibility. In passing on objections, the board, while not bound to view proffered testimony according to its admissibility under strict application of the rules of evidence in judicial proceedings, should exclude testimony that is clearly irrelevant

to issues in the case, or that pertains to matters outside the jurisdiction of the board or the Atomic Energy Commission. Examples of matters which are considered irrelevant to the issues in the case or outside the jurisdiction of the board or the Atomic Energy Commission include the thermal effects (as opposed to the radiological effects) of the facility operation on the environment; the effect of the construction of the facility on the recreational, economic or political activities of the area near the site; and matters of aesthetics with respect to the proposed construction.

(c) Documentary Evidence

- (1) Documentary evidence may be offered in evidence as provided in 10 CFR § 2.743.
- (2) Such evidence offered during the course of the hearing should be described by counsel, and furnished to the reporter for marking. Documents offered for marking should be numbered in order of receipt. On identification of a document, it may be offered in evidence.

(d) Record

- (1) The transcript of testimony and the exhibits, together with all of the papers and requests filed in a proceeding, constitute the record for decision, except to the extent that official notice is taken pursuant to the following paragraph.

(e) Official Notice

(1) "Official notice" is a legal term of art.

Generally speaking, a decision by a board must be made on the basis of evidence which is in the record of the proceeding. A board, however, is expected to use its expert knowledge and experience in evaluating and drawing conclusions from the evidence that is in the record. The board may also take account of and rely on certain facts which do not have to be "proved" since they are "officially noticed"; these facts do not have to be "proved" since they are matters of common knowledge.

(2) A board may take "official notice" of any fact of which judicial notice might be taken by the courts of the United States. Generally speaking, the courts may take judicial notice of facts if: (1) the matter is one of common and general knowledge; (2) the matter is well settled and not doubtful or uncertain; and (3) the matter is known to be within the limits of the jurisdiction of the court.

(3) In addition, a board may take "official notice" of any technical or scientific fact within the knowledge of the Commission. (For example, a board might take "official notice" of the fact that high level wastes are encountered mainly as liquid residue from fuel reprocessing plants.) Matters which are "officially noticed" by a board furnish the same basis for findings of fact as matters which have been placed in evidence and proved in the usual sense.

(4) The AEC regulation which is applicable to "official notice" and the conditions of its use is 10 CFR § 2.743(1).

(f) Participation by Board Members

(1) Boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. The role of the board is to decide whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the provisional construction permit proposed by the Director of Regulation. The board will not conduct a de novo review of the application, but rather, will test the adequacy of the staff's review upon which are based the findings and form of provisional construction permit which the Director of Regulation proposes to issue. If the board believes that additional information is required in the technical presentation in such a case, it would be expected to request the applicant or staff to supplement the

presentation. If a recess should prove necessary to obtain such additional evidence, the recess should ordinarily be postponed until available evidence on all issues has been received.

- (2) Where it is necessary or desirable to do so, as a matter of discretion, or because they deal with matters beyond the authority of the board, or because the Commission's regulations or order so require, questions may be certified to the Commission for its determination.

A question might be certified to the Commission when it is beyond the board's authority, or when a major question of policy or procedure is involved which cannot be resolved except by the Commission and when the prompt and final decision of the question is important for the protection of the public interest or to avoid undue delay or serious prejudice to the interests of a party. For example, a board may find it appropriate to certify novel questions to the Commission as to the regulatory jurisdiction of the Commission or the right of persons to intervene.

(g) Close of Hearing

- (1) A board should give each party the opportunity to make a brief closing statement.

(2) A schedule should be set by the board and recorded, either in the transcript or by written order, of the dates upon which the parties are directed by the board to file proposed findings of fact and conclusions of law.

Proposed transcript corrections and proposed findings and conclusions are ordinarily filed in the first instance by the applicant, with opportunity for response by the regulatory staff and any intervenor. The atomic safety and licensing board need allow only a minimum time for the filing of proposed findings of fact and conclusions of law, briefs, and proposed form of order or decision, as permitted by § 2.754 of 10 CFR Part 2. It is expected that the proposed findings will ordinarily be extremely brief. Since there will be no significant issues in controversy, there will be no need for extensive findings.

(3) The board should dispose of any additional procedural requests.

(4) The chairman should formally close the hearing.

IV. Post-Hearing Proceedings, Including the Initial Decision

(a) A board, acting through the chairman, should dispose of procedural requests made after the close of the hearing, including motions of the parties for correction of the transcript. Responses to requests and motions of the parties are made part of the record by issuance of written orders.

(b) On receipt of proposed findings and conclusions from the parties, the board should prepare the initial decision. Under the Administrative Procedure Act and the Commission's regulations, the decision should 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, if any, in making the decision;
- (3) The appropriate ruling, order or denial of relief, with the effective date and time within which exceptions to the initial decision may be filed;
- (4) The time when the decision becomes final.

(c) A board will not ordinarily be expected to make formal recital of findings in greater detail than general or ultimate findings on the issues specified in the notice of hearing. The board will, of course, rule on findings of fact and conclusions of law proposed by the parties. To the extent that there may be disagreements between any of the parties on any particular matters, the board will be expected to make such detailed findings of fact as are appropriate to support the decisions reached on those matters.

- (d) A board will be expected to discuss concisely, in its decision, the principal safety matters involved in the issuance or denial of the proposed provisional construction permit. A board's initial decision should be prepared with the objective of familiarizing the public and the Commission with the reasons for the board's conclusions as to why the application and the record of the proceeding do or do not contain sufficient information and the review of the application by the Commission's regulatory staff has or has not been adequate to support both the findings proposed by the Director of Regulation and the issuance of the provisional construction permit.
- (e) A board will, in its initial decision, make findings on whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's regulatory staff has been adequate, to support the findings proposed to be made by the Director of Regulation and the issuance of the proposed provisional construction permit. If the board finds affirmatively on those issues, the Director of Regulation will, upon his making the proposed findings, issue the permit. If the board finds negatively on those issues, the Director of Regulation will deny the application.
- (f) It is expected that ordinarily a board will render its initial decision in an uncontested case within 15 days after its receipt of proposed findings of fact and conclusions of law filed by the parties.
- (g) The initial decision will be transmitted to the Chief, Public Filing and Proceeding Branch, Office of the Secretary, for issuance.

- (h) After a board's initial decision is issued, the entire record of the hearing, including the board's initial decision, will be sent to the Commission for review. In the course of this review, the Commission may allow a board's decision to become the final decision of the Commission, may modify a board's decision, or may send the case back to the board for additional testimony on particular points or for further consideration of particular issues.
- (i) After completion of construction, the applicant must obtain an operating license; but a hearing on the operating license will not be held unless demanded by a party or ordered by the Commission. Where a hearing is held at the operating stage, it would be the practice of the Commission to attempt to use the same board which conducted the construction permit hearing.

V. General

- (a) Two members, being a majority of the board, constitute a quorum. The vote of a majority controls in any decision by a board, including rulings during the course of a hearing as well as formal orders and the initial decision. A dissenting member is, of course, free to express his dissent and the reasons for it in a separate opinion for the record.
- (b) The Commission may designate a technically qualified alternate for a board. Such an alternate will receive copies of and become familiar with the application and other documents filed by the parties and will be encouraged, but not required, to attend the prehearing

conference and hearing. The alternate may submit to the board questions for witnesses, and he may, with the consent of the parties, directly question witnesses, but he will not otherwise actively participate in the activities of the board. However, it should be noted that in initial licensing proceedings, the alternate, like any other member of the panel from which the Commission appoints atomic safety and licensing boards, may be consulted by the board on any fact in issue pursuant to § 2.719 of 10 CFR Part 2. In the event that a technically qualified member of a board becomes unavailable before the board renders its decision, the board will notify the Commission and the alternate. Upon receipt of such a notification the alternate becomes a member of the board and participates fully in all duties of the board, including making the initial decision.

VI. Procedures Applicable to Contested Proceedings

(a) This section sets out certain differences in procedure from those described in Sections I - V above, which are required by the fact that the proceeding is a "contested proceeding." Otherwise, the provisions of Sections I through V of this Statement of General Policy also apply to a "contested proceeding."

(b) Issues to be Decided by Board

The board will, if the proceeding becomes a contested proceeding make findings on the issues specified in the notice. In a contested proceeding, the board will determine:

- (1) Whether in accordance with the provisions of 10 CFR § 50.35(a)

- (a) The applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;
- (b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;
- (c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve any safety questions; and

- (d) On the basis of the foregoing, there is reasonable assurance that (1) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facility and (11) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facility can be constructed and operated at the proposed location without undue risk to the health and safety of the public;
- (2) Whether the applicant is technically qualified to design and construct the proposed facility;
- (3) Whether the applicant is financially qualified to design and construct the proposed facility;
- (4) Whether the issuance of a permit for the construction of the facility will be inimical to the common defense and security or to the health and safety of the public.

In considering those issues, however, the board will, without conducting a de novo review of matters not in controversy, ascertain, as to such matters, the sufficiency of the application and the record of the proceeding, and the adequacy of the regulatory staff's review, to support the findings proposed by the Director of Regulation.

(c) Prehearing Conference

In contested proceedings, the use of the prehearing conference to identify what matters are in controversy and to clarify their relationship to the issues before the board is of primary importance.

(d) Participation by Board Members

In contested proceedings the board will determine controverted matters as well as decide whether the findings required by the Act and the Commission's regulations should be made. Thus, in such proceedings, the board will determine the matters in controversy and may be called upon to make technical judgments of its own on those matters. As to matters which are not in controversy, boards are neither required nor expected to duplicate the review already performed by the regulatory staff and the ACRS and they are authorized to rely upon the uncontroverted testimony of the regulatory staff and the applicant and the uncontroverted conclusions of the ACRS. The board is not expected to make an independent review of those matters already evaluated by the staff which are not in controversy. As to such matters, however, the board is expected to consider and determine the sufficiency of the application and the record and the adequacy of the regulatory staff's review to support findings necessary under the Act and the Commission's regulations for the issuance of a provisional construction permit.

(e) Close of Hearing

In contested proceedings, proposed findings of fact and conclusions of law submitted by the parties may be more detailed than in uncontested proceedings. While brevity in such submissions is encouraged, the proposed findings and conclusions should be such as to reflect the positions of the parties submitting them, and the technical and factual bases therefor.

(f) Post-Hearing Proceedings, Including the Initial Decision

- (1) In contrast to an uncontested proceeding, the board will itself make all the findings specified in § 50.35(a) and the reasons or basis for its findings. On the basis of those findings, the initial decision will state the board's determination whether or not a construction permit should be issued and, if so, in what form.
 - (2) In a contested case, it is expected that a board will ordinarily render its initial decision within 45 days after its receipt of proposed findings of fact and conclusions of law filed by the parties.
6. The section heading of § 50.34 of 10 CFR Part 50 is amended to read as follows:
- § 50.34 Contents of applications; technical information /hazards/ safety analysis /summary/ report.
7. Paragraph 50.35(a) of 10 CFR Part 50 is revised by amending subparagraphs (1), (2) and (3) to read as follows:
- § 50.35 Issuance of provisional construction permits.

(a) When an applicant has not supplied initially all of the technical information required to complete the application and support the issuance of a construction permit which approves all proposed design features, the Commission may issue a provisional construction permit if the Commission finds that (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components [on which further technical information is required] incorporated therein for the protection of the health and safety of the public; (2) [the omitted] such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report; (3) safety features or components, if any, which require research and development have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve [the] any safety questions associated with such features or components; [if any, with respect to those features or components which require research and development] and

8. Paragraphs 50.30(c), 50.35(c)(1), 50.36(a) and (c), 50.59(a), (b), (c) and (e) of 10 CFR Part 50 are amended by substituting the words "safety analysis report" for the words "hazards summary report" where they appear.

9. Paragraph 50.59(d) of 10 CFR Part 50 is amended by substituting the words "safety analysis report" for "hazards analysis" in the second sentence.

10. Section 55.20 of 10 CFR Part 55 is amended by substituting the words "safety analysis report" for "hazards summary report" in the second sentence.

11. The section heading of § 115.23 of 10 CFR Part 115 is amended to read as follows:

§ 115.23 Contents of applications; technical information [hazards summary] safety analysis report.

12. Paragraph 115.24(a) of 10 CFR Part 115 is revised by amending subparagraphs (1), (2), and (3) to read as follows:

§ 115.24 Issuance of provisional construction authorizations.

(a) When an applicant has not supplied initially all of the technical information required to complete the application and support the issuance of a construction authorization which approves all proposed design features, the Commission may issue a provisional construction authorization if the Commission finds that (1) the applicant has described the proposed design of the facility, including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components [on which further technical information is required;] incorporated therein for the protection of the health and safety of the public; (2) [the omitted] such further technical or design information as may be required to complete the safety analysis, and which can reasonably be left for later consideration, will be supplied in the final safety analysis report; (3) safety features or components, if any, which require research and development have been described by the applicant and the applicant has proposed, and there will be conducted, a research and development program reasonably designed to resolve [the] any safety questions associated with such features or components; [if any, with respect to those features or components which require research and development;] and

13. Paragraphs 115.20(c), 115.24(c)(1), 115.25(a) and (c), 115.45(a), (b), (c) and (e) of 10 CFR Part 115 are amended by substituting the words "safety analysis report" for the words "hazards summary report" where they appear.

14. Paragraph 115.47(d) of 10 CFR Part 115 is amended by substituting the words "safety analysis report" for "hazards analysis" in the second sentence.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201.)

FOR THE ATOMIC ENERGY COMMISSION

By: _____

W. B. McCool
Secretary to the Commission

Dated at _____

this _____ day of _____, 1966.

APPENDIX "D"

DRAFT LETTER TO JOINT COMMITTEE ON ATOMIC ENERGY

1. Enclosed for the information of the Joint Committee on Atomic Energy are notices of proposed rule making to (a) amend the Commission's Rules of Practice, 10 CFR Part 2 and incorporate, as an appendix to Part 2, a Commission statement of general policy respecting the conduct of proceedings involving applications for construction permits for power and test reactors or other production or utilization facilities for which hearings are mandatory under the Atomic Energy Act of 1954, as amended and, (b) amend the Commission's Regulations, 10 CFR Parts 50, 55 and 115.

2. The proposed amendments and statement of general policy reflect several recommendations made by the Regulatory Review Panel appointed by the Commission to review the Commission's licensing procedures for power and test reactors.

3. The proposed amendments of Part 2 would revise § 2.104 by adding a new paragraph to set out the issues which would be specified in the notice of hearing on applications for a construction permit for a facility under section 103 or section 104 b. of the Atomic Energy Act of 1954, as amended, or for a testing facility under section 104 c. of the Act. The issues in a contested proceeding - that is, a proceeding in which there is a controversy between the regulatory staff and the applicant for a license concerning the issuance of a license or any of its terms or conditions or a proceeding in which a petition to intervene has been filed - would be essentially the same as those presently set out in notices

of hearing. However, the presiding officer would be directed not to conduct a de novo review of matters not in controversy. In a proceeding which is not contested the issues to be considered would be whether or not the application and the record in the proceeding contain sufficient information, and the Commission staff's review has been adequate, to support the Director of Regulation's proposed findings on the issues presently set forth in notices of hearing and the issuance of a proposed provisional construction permit. In an uncontested proceeding there would not be a de novo review of the application.

4. Part 2 would also be amended to revise § 2.721 by adding a provision for the appointment by the Commission of a technically qualified alternate to an atomic safety and licensing board who would serve as a member of a board in the event that one of the two technically qualified members of the board were to become unavailable.

5. Another proposed amendment of Part 2 would revise § 2.764 to provide that initial decisions directing the issuance or amendment of a construction permit or authorization would become immediately effective, without the necessity of filing a motion, unless good cause has been shown by a party to the proceeding why the initial decision should not become immediately effective. This proposed amendment would also provide that, notwithstanding the filing of exceptions to a decision by a party to the proceeding, the Director of Regulation would be required to issue the construction permit or authorization or amendment thereto, directed by an

initial decision, within ten days from the date of issuance of the decision.

6. A statement of general policy is proposed to be appended to Part 2. This statement of general policy is designed to explain in detail the procedures which the Commission expects to be followed by atomic safety and licensing boards or hearing examiners in the conduct of proceedings relating to applications for construction permits for which public hearings are mandatory under the Act.

7. The proposed amendments of Parts 50 and 115 would revise §§ 50.35(a) and 115.24(a) to clarify the intent of the present language.

8. In addition the proposed amendments of Parts 2, 50, 55 and 115 would revise §§ 2.105(b)(2), 2.106(b)(2), 50.30(c), 50.34, 50.35(c)(1), 50.36(a), 50.36(c), 50.59(a), (b), (c) and (e), 50.59(d), 55.20, 115.20(c), 115.23, 115.24(c)(1), 115.25(a) and (c), 115.45(a), (b), (c) and (e) and 115.47(d) to substitute the term "safety analysis report" for "hazards summary report" and "safety analysis" for "hazards analysis". It is believed that these substitutions will provide a more accurate description of these documents.

9. Two other notices of proposed rule making, which are essentially in agreement with the Panel's recommendations, are also enclosed.

10. The notice entitled "Termination of Jurisdiction of Presiding Officers" proposes an amendment of § 2.717 of Part 2 to provide that the jurisdiction of a presiding officer, whether a hearing examiner or atomic safety and licensing board, terminates when Commission action in the proceeding becomes final.

11. The notice entitled "Intra-Agency Communications in Initial Licensing Proceedings" proposes amendments of §§ 2.719 and 2.780 of Part 2 to permit communications between the Commissioners and staff, including the regulatory staff, in initial licensing cases. In contested initial licensing cases such communications would be permitted only at the initiative of the Commission, and with staff who had not participated in the hearing as witness or counsel. The amendments would also permit members of atomic safety and licensing boards to consult other members of the panel in initial licensing cases, and, except in contested cases, the staff. The amendments would require that if the Commission's or a board's decision should rest on fact or opinion, not appearing in the evidence of record, obtained in any such communication, the substance of the communication would be made a matter of public record in the proceeding with opportunity for rebuttal.

12. All three notices of proposed rule making will be transmitted to the Office of the Federal Register and will allow sixty days for public comment after publication in the Federal Register.

13. Enclosed also is a copy of an announcement we plan to issue in the next few days relating to these proposed amendments.

APPENDIX "E"

DRAFT PUBLIC ANNOUNCEMENT

AEC PROPOSES AMENDMENTS TO REGULATIONS AND POLICY STATEMENT
ON REACTOR LICENSING PROCEDURES

The Atomic Energy Commission is proposing amendments to its rules designed to expedite the Commission's reactor licensing proceedings and to clarify some provisions of existing regulations. The Commission is also proposing to adopt a statement of general policy concerning the conduct of public hearings by atomic safety and licensing boards.

These proposed amendments and the proposed statement of general policy reflect several recommendations made by a special Regulatory Review Panel appointed by the Commission to study ways of streamlining AEC reactor licensing procedures.

The proposed amendments are:

(1) A change is being proposed in the AEC Rules of Practice (Part 2) which would provide that in a hearing on an application for a construction permit for a nuclear power plant or other nuclear facility, which is uncontested, the licensing board would determine whether the application and the record of the proceeding contain sufficient information and review of the application by the AEC Regulatory Staff has been adequate to support certain specified findings proposed to be made by the Commission's Director of Regulation and to support the issuance of a provisional construction permit also proposed by the Director of Regulation. If such an application is contested - that is, if there is a controversy between the AEC Regulatory Staff and the applicant concerning the issuance of the license or any of its terms or conditions, or if the application is opposed by any other party to the proceeding - then the atomic safety and licensing board or the hearing examiner would consider any matters in controversy

(2) Another proposed change would relax present restrictions on communications between the Commissioners and members of the AEC staff. In uncontested cases involving initial licensing, communications would be permitted between the Commissioners, members of their immediate staffs, and AEC personnel who advise the Commissioners in the exercise of their quasi-judicial functions, on the one hand, and the AEC staff, including the Regulatory Staff, on the other hand. In contested cases, consultation would be permitted only at the initiative of the Commission and would be restricted to those members of the AEC staff, including the Regulatory Staff, who have not appeared at or directly participated in the public hearing as witness or counsel. In initial licensing cases, presiding officers (hearing examiners or atomic safety and licensing boards) who conducted public hearings would be permitted to communicate with members of the panel from which the Commission appoints licensing boards. In uncontested initial licensing cases presiding officers also would be permitted to consult the Commission's staff. If the Commission's or presiding officer's decision should rest on fact or opinion, not appearing in the evidence in the record of the case and obtained in any such communication, the substance of the communication would be made a matter of public record in the proceeding with opportunity for rebuttal. The object of relaxation of the rules is to facilitate Commission review of licensing proceedings and to enable the Commission and its presiding officers to deal more effectively with the safety considerations involved in licensing proceedings by permitting access to and use of the expertise of its staff.

(3) A provision is being added to the Rules of Practice for appointment of a technically qualified alternate to atomic safety and licensing boards which ordinarily conduct hearings in reactor cases. If one of the two technical members of a board should become unavailable, the alternate would then serve in his stead.

(4) Another proposed amendment would provide that the initial decision of an atomic safety and licensing board or a hearing examiner directing the issuance or amendment of a construction permit or authorization would become immediately effective without the necessity of filing a motion, unless good cause has been shown by a party to the proceeding why the initial decision should not become immediately effective. At present, the board or examiner has the discretion, upon the filing of a motion, to make the initial decision effective 10 days after issuance. The proposed change would also require the Director of Regulation to issue a construction permit or authorization or amendment as directed by an initial decision regardless of whether an exception to the initial decision had been taken by any party to the proceeding. The initial decision would continue to be subject to review by the Commission and to any order the Commission might make within 45 days after issuance of the initial decision.

(5) The Commission proposes to state precisely when the jurisdiction of licensing boards and hearing examiners ends in licensing proceedings. This would be done by providing that their jurisdiction terminates at the time their initial decision becomes the final decision of the Commission or when final action has been taken by the Commission.

(6) Parts 50 and 115 of the AEC regulations governing reactor licensing and authorizations would be clarified. At present, the regulations authorize the issuance of a construction permit or authorization, if, among other things, the Commission finds that the applicant "has identified the major features or components on which technical information is required," and that "the omitted technical information will be supplied." The proposed amendments would clarify the point that certain design and technical information need not be submitted until the operating license stage.

(7) Parts 2, 50, 55 and 115 of AEC regulations would be amended to substitute the term "safety analysis report" for "hazards survey

report," and "safety analysis" for "hazards analysis" where they appear. It is believed the terms "safety analysis report" and "safety analysis" are more accurate descriptions of those documents.

The proposed statement of general policy, which would be appended to Part 2 of the regulations, concerns the conduct of hearings by atomic safety and licensing boards and hearing examiners in cases involving applications for construction permits for power and test reactors or for other facilities for which hearings are mandatory. It is intended to explain and summarize for the information of the public and the assistance of members of boards, hearing examiners and the parties to licensing proceedings certain requirements of governing statutes, the Commission's Rules of Practice, and some applicable principles of law and good practice.

Persons wishing to submit comments or suggestions in connection with these proposed amendments to the AEC regulations or the statement of general policy should send them to the Secretary, United States Atomic Energy Commission, Washington, D. C. 20545, within 60 days after publication in the Federal Register on _____.