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

(1)

November 21, 1989

Memorandum For: Nuclear Document System

From: Bradley W. Jones
OGC

Subject: Regulatory History -"Rules of Practice For Domestic Licensing Proceedings--Procedural Changes in the Hearing Process"

In accordance with the September 13, 1989 Memorandum to Stuart Treby from Michael Lesar of the Regulatory Publications Branch, I have attached the relevant documents for the legislative history of the above rulemaking. The first list is of those documents which are not to my knowledge available to the public. The second list is of publically available documents. I understand you will forward a computer printout of these documents to me after they have been entered on the NUDOCS system.

Bradley W. Jones

cc: w/o attachments
M. Lesar, RFB

NON-PUBLIC DOCUMENTS

1. SECY-82-2 Date January 4, 1982

Subject: PROPOSED CHANGES TO PART 2: MANAGEMENT OF DISCOVERY

2. SECY-82-60 Date February 12, 1982

Subject: PART 2 - CONTENTIONS

3. SECY-86-40 Date February 04, 1986

Subject: PROPOSED CHANGES TO 10 CFR PART 2 TO IMPROVE THE HEARING PROCESS: SELECTED PROPOSALS SUGGESTED BY THE PRTF AND COMMISSIONER ASSELSTINE

4. SECY-86-40A Date February 20, 1986

Subject: PROPOSED CHANGES TO 10 CFR PART 2 TO IMPROVE THE HEARING PROCESS (SEC-86-40): CLARIFICATION OF RRTF PROPOSAL TO LIMIT INTERVENORS' FILINGS OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND APPELLATE BRIEFS

5. MEMORANDUM Dated April 17, 1986

Memorandum For: Herzel H. E. Plaine and Guy H. Cunningham
General Counsel Executive Legal Director

From: Samuel J. Chilk, Secretary

Subject: SECY-86-40/40A

6. SECY-86-40B Date May 1, 1986

Subject: PROPOSED CHANGES TO 10 CFR PART 2 TO IMPROVE THE HEARING PROCESS: SELECTED PROPOSALS SUGGESTED BY THE RRTF AND COMMISSIONER ASSELSTINE (SECY-86-40/40A)

7. MEMORANDUM Dated May 27, 1986

Memorandum For: Victor Stello, Jr.
Executive Director for Operations

From: Samuel J. Chilk, Secretary

Subject: SECY-86-40B

NON-PUBLIC DOCUMENTS

8. SECY-89-133 Date April 25, 1989

Subject: FINAL RULE FOR REVISIONS TO 10 CFR PART 2 TO IMPROVE THE HEARING PROCESS

9. MEMORANDUM Dated May 4, 1989

Memorandum For: Chairman Zech
Commissioner Roberts
Commissioner Carr
Commissioner Rogers
Commissioner Curtiss

From: B. Paul Cotter, Jr., Chief Administrative Judge

Subject: FINAL RULE FOR REVISIONS TO 10 CFR PART 2 TO IMPROVE THE HEARING PROCESS

10. MEMORANDUM Dated May 10, 1989

Memorandum For: Chairman Zech
Commissioner Roberts
Commissioner Carr
Commissioner Rogers
Commissioner Curtiss

From: Christine N. Kohl, Chairman
Atomic Safety and Licensing Appeal Panel

Subject: FINAL RULE FOR REVISIONS TO 10 CFR PART 2 TO IMPROVE THE HEARING PROCESS (SECY-89-133)

11. AFFIRMATION VOTE Date June 09, 1989

Vote Sheet From: Commissioner Curtiss

Subject: SECY-89-133 - FINAL RULE FOR REVISIONS TO 10 CFR PART 2 TO IMPROVE THE HEARING PROCESS

12. AFFIRMATION VOTE Dated June 16, 1989

Vote Sheet From: Commissioner Carr

Subject: SECY-89-133

NON-PUBLIC DOCUMENTS

13. AFFIRMATION VOTE Dated June 02, 1989

Vote Sheet From: Chairman Zech

Subject: SECY-89-133

14. AFFIRMATION VOTE Dated June 06, 1989

Vote Sheet From: Commissioner Roberts

Subject: SECY-89-133

15. AFFIRMATION VOTE Dated June 09, 1989

Vote Sheet From: Commissioner Rogers

Subject: SECY-89-133

16. AFFIRMATION VOTE Dated June 09, 1989

Vote Sheet From: Commissioner Rogers

Subject: SECY-89-1989

17. AFFIRMATION VOTE Dated June 16, 1989

Vote Sheet From: Commissioner Carr

Subject: SECY-89-133

18. AFFIRMATION VOTE Dated June 16, 1989

Vote Sheet From: Commissioner Carr

Subject: SECY-89-133

PUBLIC DOCUMENTS

1. 49 Fed. Reg. Page 30349 Date June 8, 1981

10 CFR Part 2

Rules of Practice for Domestic Licensing Proceedings; Modifications to the NRC Hearing Process

2. 49 Fed. Reg. Page 14698 Date April 12, 1984

10 CFR Parts 2 and 50

Regulatory Reform Proposal Concerning Rules of Practice and Rules for Licensing Production and Utilization Facilities; Request for Public Comment

AC22-2 and AA05-2

Proposed Rules

Federal Register
Vol. 46, No. 109
Monday, June 8, 1981

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rules of Practice for Domestic Licensing Proceedings; Modifications to the NRC Hearing Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering several amendments to its Rules of Practice to facilitate expedited conduct of its adjudicatory proceedings. These amendments would require a person seeking intervention in formal NRC hearings to set forth the facts on which the contentions are based and the sources or documents used to establish those facts, limit the number of interrogatories that a party may file on another party in an NRC proceeding, and permit the boards to require oral answers to motions to compel and service of documents by express mail. An alternative formulation of the amendments would also require an increased threshold showing in support of a contention as a prerequisite to admission for hearing.

DATES: Comment period expires on June 29, 1981. No requests for extensions of time will be granted.

ADDRESSES: All interested persons who desire to submit comments in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments on the proposed amendments may be examined at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Martin G. Malsch, Esq., Deputy General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (202) 634-1465.

SUPPLEMENTARY INFORMATION: In recent weeks the Commission has been examining its hearing process to determine if there are means to expedite the hearing process without reducing its quality or fairness. As a result of this review the Commission has sought comment on several proposed amendments to 10 CFR Part 2, the Commission's Rules of Practice (46 FR 17216, March 18, 1981) and issued a "Statement of Policy on the Conduct of Licensing Proceedings." The Commission is soliciting comments on the following additional changes to the Commission's Rules of Practice:

1. Intervention in NRC Proceedings

Formal administrative hearings are always conducted by NRC as part of its proceedings on applications for constuction permits for nuclear power plants and frequently on applications for operating licenses and license amendments. Any member of the public whose interest may be affected by the proceeding is entitled to participate in NRC hearings under 10 CFR 2.714 and section 189a of the Atomic Energy Act (42 U.S.C. 2239a).

The Commission is concerned that its present intervention process is not satisfactorily serving the public's interest in efficient resolution of nuclear plant licensing issues. Trial-type hearings are generally acknowledged as best suited for the resolution of contested factual issues. Thus, one means to more efficient decisionmaking is to reduce the possibility that time and resources may be expended by the parties and hearing tribunals in a proceeding on issues that do not involve material factual disputes. To this end, the proposed amendment seeks to relate the Commission's rules on intervention (10 CFR 2.714) more clearly and directly to the fact-oriented character of NRC licensing hearings. Under the proposal, a person who petitions to intervene and request a hearing would be required to set forth at the outset the facts on which the contention is based and the sources or documents used or intended to be used to establish those facts. This requirement would give other parties early notice of an intervenor's case so as to afford opportunity for an early motion for summary disposition where there is no factual dispute. The Commission official designated to rule on intervention questions could dismiss or otherwise impose a sanction respecting any petition, request, or contention that is found not to satisfy the requirement.

The Atomic Energy Act of 1954, as amended (42 U.S.C. 2239a) provides that "the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding." Commission rules for intervention (10 CFR 2.714(b)) further provide that a person who petitions to intervene in a proceeding must later submit "a supplement to his petition to intervene which must include a list of contentions which petitioner seeks to have litigated * * * and the bases for each contention set forth with reasonable specificity." To participate as a party, the petitioner must advance at least one contention that satisfies this requirement. The requirement of a list of contentions was intended to serve as the mechanism by which a would-be intervenor informs the parties to the proceeding and the hearing tribunal of the issues upon which the intervenor wishes to be heard. The list of contentions, in turn, was intended to crystallize the questions whether such issues are germane to matters properly within the scope of the proceeding as set out in the notice of hearing or notice of opportunity for hearing. Admitted contentions are included as matters in controversy in a proceeding and, thus, govern the scope of administrative discovery under 10 CFR 2.740(b)(1).

Under present practice, the Commission official designated to rule on intervention questions examines each contention to determine whether (1) the contention is stated with the requisite specificity, (2) the basis is adequately delineated, and (3) the issue sought to raised is cognizable in an individual licensing proceeding. *Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216-17 (1974).

The examination is limited to what appears within the four corners of the contention as stated. No inquiry is made into the merits of the contention. All that is required is that the petitioner "state his reasons (i.e., the basis) for his contention * * *" *Houston Lighting and Power Co.* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590,

11 NRC 542, 548 (1980). The petitioner is under no obligation to demonstrate the existence of some factual support for a contention, as a precondition to its acceptance under 10 CFR 2.714. That obligation currently arises later in the proceeding, either in opposition to a motion for summary disposition filed by another party (10 CFR 2.749) or at the evidentiary hearing. ALAB-590 *supra*, 11 NRC at 549–51.

Under the proposed amendment, an interested person petitioning to intervene in an NRC licensing proceeding and requesting a hearing must set forth in the supplement required by 10 CFR 2.714(b) a concise statement of the facts supporting each contention together with references to the specific sources and documents which have been or will be relied on to establish such facts. Thus, the amendment would strengthen one of the purposes of the present rule, which is to give notice to the parties and the adjudicatory board of a would-be intervenor's concern, by also requiring notice of (1) the facts on which the concern is based, and (2) the sources or references which have been or will be used to establish those facts. References by title to lengthy or general studies and reports would not suffice. If, for example, the BEIR Report or the Reactor Safety Study is relied upon, specific portions of the document must be referenced.

The amendment would permit the staff or applicant to seek and the presiding NRC official to compel a more specific or definite statement if the would-be intervenor (1) fails to submit any facts, sources, or references at all, or (2) submits purported facts, sources, or references which are so vague as to give inadequate notice. The presiding officer would have the authority to impose appropriate sanctions against a person whose supplement failed to satisfy the proposed requirement, including the power to dismiss a contention. As under existing practice, a person who fails to file a supplement which satifies the requirement with respect to at least on contention would not be permitted to participate as a party. See 10 CFR 2.714(b).

The proposed changes does not permit the NRC official authorized to rule on petitions for intervention to consider whether the facts, sources, or references contained in a supplement are legally sufficient to prove the contention. However, an obviously insufficient factual or evidentiary basis could prompt the staff or applicant to move early for summary disposition.

In recognition that one purpose of the contention process is to help frame the scope of subequent proceedings, an intervenor admitted to a proceeding would not be permitted, absent good cause, to seek or establish facts or rely on sources as to which notice was not given when the contention was admitted. However, an intervenor would not be limited to the facts, sources, and references identified in his supplement if he can show good cause such as, for example, newly discovered facts, sources, or references not reasonably available when the contention was admitted.

The Commission believes that the proposed amendment would not unlawfully restrict the intervention rights provided by the Atomic Energy Act of 1954 (42 U.S.C. 2239a) or the Administrative Procedure Act (5 U.S.C. 554–557). The amendment is intended to curtail an intervenor's right to participate only on these issues where the intervenor fails to identify the facts, sources, and references on which the intervenor has or will rely for the contention.

A member of the public has no absolute or unconditional right to intervene in a nuclear power plant licensing proceeding under the Atomic Energy Act. *BPI* v. *Atomic Energy Commission*, 502 F. 2d 424 (D.C. Cir. 1974). Section 189a of the Act which provides for intervention is subject to the Commission's rulemaking power under section 161p and, thus, to reasonable procedural requirements designed to further the purposes of the Act. *BPI* v. *Atomic Energy Commission*, *supra*, 502 F. 2d at 427, 428; *see also American Trucking Ass'ns, Inc.* v *United States*, 627 F. 2d 1313, 1320–23 (D.C. Cir. 1980). Furthermore, the right to intervention under section 189a for a member of the public is explicitly conditioned upon a "request." The proposed amendments would, in effect, provide that a "proper request" by a member of the public shall include a statement of the facts supporting each contention together with references to the sources and documents on which the intervenor relies to establish those facts. Finally, the Administrative Procedure Act creates no independent right to intervene in nuclear licensing proceedings. *See Easton Utilities Commission* v. *Atomic Energy Commission*, 424 F. 2d 847, 852 (D.C. Cir. 1970) (en banc); cf. *National Coal Operators' Assn.* v. *Kleppe*, 423 U.S. 388, 398–99, 46 L. Ed. 2d 580, 96 S. Ct. 809 (1976).

Comments also are requested on an alternative amendment to the rules on intervention that would impose additional requirements on persons seeking to intervene in nuclear licensing hearings. In particular, would-be intervenors could not have a contention admitted for hearing under the alternative formulation if the documents and other information submitted fail to demonstrate that there exists a genuine issue of material fact to be heard. The NRC official authorized to rule on intervention matters could use his or her technical knowledge in deciding whether a genuine issue of fact exists. Further, the alternative amendment would require the facts asserted in support of a contention to be sufficient to state a *prima facie* case. Finally, a contention raising only an issue of law would not be admitted for hearing but, rather, would be decided on the basis of briefs and/or oral argument in accordance with procedures to be established by the NRC presiding officer.

2. Limit on Interrogatories

Currently, parties to NRC proceedings may file interrogatories on the other parties without any specific limit. The Commission is requesting comment on a proposed rule which would provide that unless leave to file additional interrogatories is granted by a licensing board, parties may not file more than 50 interrogatories on another party in a single NRC proceeding. This rule would apply to all NRC proceedings including hearings on construction permit and operating license applications, license amendment proceedings, antitrust hearings, and enforcement proceedings. For purposes of the rule, in determining what constitutes an interrogatory, each subpart of a question (whether or not designated as such) would be considered as an interrogatory, except that requests for supporting reasoning relied upon or the name of a witness who will testify on a matter covered by an interrogatory response will not count as separate interrogatories. The rule would be applied in NRC proceedings prospectively. Thus, regardless of how many interrogatories a party has filed prior to the effective date of the rule, it could still file an additional 50 interrogatories on each party if the period for discovery has not been closed.

The Board may grant requests to file interrogatories exceeding the limit set forth in the rule if it determines that: (a) a response to the extra interrogatories is essential for the party to adequately prepare its case, taking into account the number of contentions in the proceeding, the complexity of issues, and timing of issuance and number of staff/applicant documents; (b) the information sought is

...ly would be ...ed in its ... of its ... interrogatories. ... is designed to alleviate studies ... the practice of the ... rule in NRC proceedings when ... large number of interrogatories ... In recent years, more than 20 ... States district courts have ... rules which similarly limit the ... of interrogatories that may be ... by a party without leave of the ...

... this rule is adopted, the NRC ... continue its practice of ... routinely making pertinent staff ... available to the public, and ... to requests for production of ... under 10 CFR 2.741 and the ... of Information Act.

3. Motions to Compel Discovery

Under the Commission's current regulations, parties may file responses to motions to compel. To expedite NRC proceedings, the Commission is proposing amendments to its regulations which would provide the Boards with the discretion to order that the responses be made orally in a conference telephone call or other prehearing conference, rather than in writing.

4. Service

The Commission is also proposing to permit its licensing boards to require service of documents by express mail (next day delivery). Currently, the Commission's rules provide five days for service of documents. Use of express mail in limited circumstances could reduce this time to two days.

The Commission would expect express mail delivery to be required only in those proceedings where it appears that construction of a facility may be finished prior to the completion of the operating license proceedings, or in other circumstances where expedition is especially important. Because of the expense of express mail delivery, parties should be required to use that form of service only on those parties who are required to respond to the pleading being served. For example, a party may be required to file interrogatories on a party by express mail, but should not be required to express mail copies of the interrogatories to the Board or to the parties in the proceeding which are not being asked to respond to the interrogatories. Alternatively, if a party preferred to use express mail, when so ordered by the Board, it could use first class mail and file its document three days earlier.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects the Commission's rules of practice and procedures by permitting expedition of the licensing process.

Proposed Regulatory Changes

Pursuant to the Atomic Energy Act of 1954, as amended, the energy Reorganization Act of 1974, as amended, and section 553 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 2 are contemplated.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. *Option A.* In § 2.714, paragraph (b) is revised to read as follows:

§ 2.714 Intervention.

* * * * *

(b) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. The supplement must set forth a concise statement of the facts supporting each contention together with references to the specific sources and documents and portions thereof which have been or will be relied upon to establish such facts. A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

Option B. In § 2.714, paragraph (b) is revised to read as follows:

§ 2.714 Intervention.

* * * * *

(b)(1) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. The supplement must set forth a concise statement of the facts supporting each contention together with references to the specific sources and documents and portions thereof which have been or will be relied upon to establish such facts. A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

(2) A contention shall not be admitted for hearing if the documents and other information submitted under paragraph (1) of this subsection fail to demonstrate that there is a genuine issue of material fact to be heard. In particular, failure to make such a submission or vagueness of the contention is sufficient ground for rejection.

(3) In making the decision as to whether a genuine issue of material fact exists, the members of the Boards may use their technical knowledge to judge the merit of the contention.

(4) A contention raising only an issue of law shall be decided on the basis of briefs or oral argument in accordance with procedures to be established by the presiding officer or the Board.

(5) A contention shall not be admitted if the facts asserted are legally insufficient to support the contention or if the contention is immaterial or irrelevant to the proposed action which is before the presiding officer or the Board.

2. Section 2.710 is revised to read as follows:

§ 2.710 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon by mail, five (5) days shall be added to the prescribed period. Only two (2) days

shall be added when a document is served by express mail.

3. In § 2.712, paragraph (c) is revised to read as follows:

§ 2.712 Service of papers, methods, proof.

* * * * *

(c) How Service may be made. Service may be made by personal delivery, by first class, certified or registered mail including air mail, by telegraph, or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Commission may make special provision regarding the service of papers. The presiding officer may require service by express mail.

* * * * *

4. In § 2.720, paragraph (h)(2)(ii) is revised to read as follows:

§ 2.720 Subpoenas.

* * * * *

(h) * * *

(2) * * *

(ii) In addition, a party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories. The limits on the number of interrogatories that may be served on a party pursuant to § 2.740b apply to the staff.

* * * * *

5. In § 2.730, paragraph (h) is added which reads as follows:

§ 2.730 Motions.

* * * * *

(h) Where the motion in question is a motion to compel discovery under this section or § 2.740(f), parties may file answers to the motion pursuant to paragraph (c) of this section. The Board, in its discretion, may order that the answer be given orally during a telephone conference or other prehearing conference, rather than in writing.

* * * * *

6. In § 2.740b, paragraph (c) is added which reads as follows:

§ 2.740b Interrogatories to parties.

* * * * *

(c) No party may file more than fifty (50) interrogatories on another party during the course of the proceeding, unless leave to do so is granted by the presiding officer. For purposes of this section each subpart of a question (whether or not designated as such) is considered as an interrogatory, except that requests for supporting reasoning relied upon or the name of a witness who will testify on a matter covered by an interrogatory response will not count as separate interrogatories. The Board will grant leave to file additional interrogatories if it determines that: (1) response to the extra interrogatories is essential for a party to prepare adequately its case, taking into account the number of contentions in the proceeding, the complexity of issues, and timing of issuance and number of staff/applicant documents; (2) the information sought is not otherwise reasonably available; and (3) the party was not improvident in its overall use of its first 50 interrogatories.

Dated at Washington, D.C. this 3rd day of June, 1981.

For the Commission

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-16871 Filed 6-5-81; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-81-10]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and be received on or before August 10, 1981.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on June 2, 1981.

Edward P. Faberman,

Assistant Chief Counsel, Regulations and Enforcement Division, Federal Aviation Administration.

Petitions for Rulemaking

Docket No.	Petitioner	Description of the rule requested
21595	Irwin Diamond	Amend 14 CFR 121.538(a), to delete the following language: "remove all X-ray and scientific film from their carry-on baggage and items before inspection. If the X-ray system exposes any carry-on baggage or item to more than one milliroentgen during the inspection, the certificate holder shall post a sign which advises passengers to remove film of all kinds from their carry-on baggage and items before inspection" and insert in lieu thereof the following: "remove all film from their carry-on baggage and items before inspection. The certificate holder shall post a sign which advises passengers that 'This X-ray machine is not film safe' or in the alternative that 'X-ray inspection may affect ordinary undeveloped film.'" The petitioners state that the signs are inaccurate, untruthful, misleading, and contrary to scientific fact and personal experience of travelers in that the X-ray machine, even if they expose ordinary undeveloped film to one-half of one milliroentgen of radiation can damage the film either through one dose of radiation or the cumulative effect of several inspections.
21571	Bernard M. Diamond, M.D.	Amend § 23.1447 adding para. (a)(5) "A nasal cannula may be used for pilots at or below 20,000 feet and for passengers at or below 22,000 feet instead of an oxygen dispensing unit (mask) covering the nose and mouth." This rule change will give users an optional method to comply with oxygen breathing requirements on aircraft.
21569	Air Polynesia, Inc.	Amend § 145.71 to remove that portion of the regulation that states, "If the Administrator finds that the service necessary for maintaining or altering U.S.-registered aircraft outside the United States," and § 145.73(a)(3) to allow certified foreign repair stations to work on any U.S.-registered aircraft. Petitioner states the restriction against domestic operators being authorized to use FAA-approved foreign repair stations is outmoded. Many foreign repair stations are highly competent, and the fortuity of whether an aircraft operates partly or wholly outside the United States should not determine what FAA repair facilities it can use.

Petitions for Rulemaking: Denied

Docket No.	Petitioner	Description of the rule requested
None this period.		

[FR Doc. 81-16595 Filed 6-5-81; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 81-ACE-8]

Transition Area, Boonville, Missouri; Proposed Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Boonville, Missouri, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Jesse Viertel Memorial Airport, utilizing the Hallsville VORTAC as a navigational aid.

DATE: Comments must be received on or before July 18, 1981.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dwaine Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-532, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12 Street, Kansas City, Missouri 64106. All communications received on or before July 18, 1981, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Boonville, Missouri. To enhance airport usage, an additional instrument approach procedure to the Jesse Viertel Memorial Airport is being established, utilizing the Hallsville VORTAC as a navigational aid. The establishment of this new instrument approach procedure, based on this navigational aid, entails alteration of the transition area at Boonville, Missouri, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

The Proposed Amendment

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1981 (46 FR 540), by altering the following transition area:

Boonville, Missouri

That airspace extending upwards from 700 feet AGL within a 5-mile radius of the Jesse Viertel Memorial Airport (Latitude 39°05'00" N, Longitude 92°41'19" W) and within 4 miles

Federal Bureau of Investigation

Advisory Policy Board of the National Crime Information Center; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on June 17 and June 18, 1981, from 9:00 a.m. until 5:00 p.m. at the Red Lion Inn, 29th and Chinden Boulevard, Boise, Idaho.

The major topics to be discussed include:

(1) Status of implementation of the Interstate Identification Index Pilot Project.

(2) NCIC access by campus police agencies, railroad police agencies and regional communication centers.

(3) Reorganization of the NCIC Boat File.

(4) The presentation of proposals recommended by local and state users of the NCIC System and the quality of records within the System.

The meeting will be open to the public with approximately 45 seats available for seating on a first-come first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. W. A. Bayse, FBI, at least twenty-four hours prior to the start of the session. The noification may be by mail, telegram, cable or hand-delivered note. It should contain the name, corporate designation, consumer affiliation or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, D.C. 20535, telephone number 202-324-2606.

Dated: May 31, 1981.

William H. Webster,

Director.

[FR Doc. 81-16963 Filed 6-5-81; 8:45 am]

BILLING CODE 4410-02-M

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

Independent Areas Task Force, Fisheries Subgroup;

Pursuant to section 10(a)(2), of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Fisheries Subgroup of the Independent Areas Task Force (IATF) of the National Advisory Committee on Oceans and Atmosphere (NACOA) will meet Wednesday and Thursday, June 17-18, 1981. The Subgroup will meet in Room 550, Page #2, 3300 Whitehaven St., NW. on June 17 and Room 418, Page #1, 2001 Wisconsin Ave., NW. on June 18.

The sessions, which will be open to the public, will convene at 9:00 a.m. and adjourn at 4:00 p.m. on Wednesday, June 17 and will convene at 9:00 a.m. and adjourn at 4:00 p.m. on Thursday, June 18. Discussions with non-Federal officials on fishery issues will be conducted at this meeting. The tentative agenda is as follows:

Wednesday, June 17

Room 550, Page 2

9:00 a.m.-9:30 a.m.—Opening Remarks-Jay Lanzillo
9:30 a.m.-10:30 a.m.—Briefing by James Crutchfield, University of Washington
10:30-12:00 noon—Briefing by John Mehos, Liberty Fish Co.
12:00 noon-1:00 p.m.—Lunch
1:00 p.m.-2:00 p.m.—Briefing by Douglas Gordon, National Food Processors
2:00 p.m.-3: p.m.—Briefing by Lucy Sloan, National Federation of Fishermen
3:00 p.m.-4: p.m.—Discussion of report

Thursday, June 18

Room 418, Page 1

9:00 a.m.-10:00 a.m.—Briefing by Gilbert Radonski, Sport Fish Institute
10:00 a.m.-11:00 a.m.—Briefing
11:00 a.m.-12:00 a.m.—Briefing by Spencer Apollonio, State of Maine
12:00 noon-1:00 p.m.—Lunch
1:00 p.m.-4:00p.m.—Discussion of report

NACOA has initiated a study to formulate national goals and objectives for the oceans in the decade of the 1980's and beyond. To support the conduct of this study, the Secretary of Commerce has established the IATF for NACOA. The IATF will be responsible for the preparation of preliminary recommendations in the areas of energy, fisheries, marine transportation, ocean minerals, ocean operations and services, and waste management and pollution.

Persons desiring to attend will be admitted to the extent seating is available. Persons wishing to make formal statements should notify the Chairperson of the Subgroup on Fisheries, Jay G. Lanzillo, in advance of the meeting. The Chairperson retains the prerogative to impose limits on the duration of oral statements and discussion. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the NACOA Executive Director, Mr. Steven N. Anastasion, or Clarence P. Idyll, the Staff Member for the Fisheries Subgroup. The mailing address is: NACOA, 3300 Whitehaven Street, NW. (Suite 438, Page Building #1), Washington, DC 20235.

Stephanie M. Jones,

Administrative Assistant.

[FR Doc. 81-16967 Filed 6-5-81; 8:45 am]

BILLING CODE 3510-12-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 81-53]

Performance Review Board; Senior Executive Service

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of amendment.

SUMMARY: In accordance with 5 U.S.C. (4314(c)4)), this Notice amends the initial NASA Notice 81-20, Performance Review Board; Senior Executive Service, 46 FR 12169, February 12, 1981, which was subsequently amended by NASA Notice 81-31, 46 FR 20337, April 3, 1981. This notice further amends the membership of the Performance Review Board; Senior Executive Service, by adding the appointment of John E. O'Brien (Term expires July 1982) to replace Gerald J. Mossinghoff (Term expires July 1982).

DATE: Effective June 4, 1981.

ADDRESS: Executive Personnel Management Program, NPD-32, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip D. Waller, telephone 202-755-6825.

A. M. Lovelace,

Acting Administrator.

[FR Doc. 81-16822 Filed 6-5-81; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Class-9 Accidents; Meeting

The ACRS Subcommittee on Class-9 Accidents will hold a meeting on June 24, 1981 in Room 1046, 1717 H Street, N.W., Washington, DC to review the research budget associated with the Severe Accident Research Program. Notice of this meeting was published May 19.

In accordance with the procedures outlined in the Federal Register on October 7, 1980 (45 FR 68535), oral or

written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Wednesday, June 24, 1981, 10:00 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant employee, Mr. David Bessette (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT. The Designated Federal Employee for this meeting is Mr. Gary Quittschreiber.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: June 3, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-16672 Filed 6-5-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on June 23 and 24, 1981, at the Westbank Hotel, 475 River Parkway, Idaho Falls, ID. The Subcommittee will review the NRC Programs on Loss-of-Coolant-Accident (LOCA) and Transient Research, the LOFT Facility Research Program (Loss of Fluid Test) and will also discuss the NRC's FY 1983 Reactor Safety Research Program Budget. Notice of this meeting was published May 19.

In accordance with the procedures outlined in the Federal Register on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The majority of the meeting will be open to public attendance. The Subcommittee will be considering some predecisional budget information associated with the NRC Safety Research Program Budget for FY 1983. In order to perform this review, the ACRS must be able to engage in frank discussion with members of the NRC Staff. Therefore it may be necessary to close portions of this meeting (Sunshine Act Exemption 9(B)). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Tuesday and Wednesday, June 23-24, 1981 8:00 a.m. until the conclusion of business each day.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close portions of this meeting to public attendance to protect 1978 NRC Authorization Act to review the NRC Research Program and Budget and to report the results of the review to Congress. The authority for such closure is Exemption 9(B) to the Sunshine Act, 5 U.S.C. 552b(c)(9)(B).

Dated: June 3, 1981.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 81-16673 Filed 6-5-81; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Three Mile Island Unit 1; Meeting

The ACRS Subcommittee on Three Mile Island Unit 1 will hold a meeting on June 25 and 26, 1981 in Room 1046, 1717 H Street, N.W., Washington, D.C. to review the restart modifications required as a result of the TMI-2 accident. Notice of this meeting was published May 19.

In accordance with the procedures outlined in the Federal Register on October 7, 1980 (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions which will be closed to protect proprietary information (Sunshine Act Exemption 4). One or more closed sessions may be necessary to discuss such information. To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Thursday and Friday, June 25 and 26, 1981, 8:30 a.m. until the conclusion of business each day.*

AC22-2 and AA05-2

Federal Register

Thursday
April 12, 1984

Part V

Nuclear Regulatory Commission

10 CFR Parts 2 and 50
Regulatory Reform Proposal Concerning Rules of Practice and Rules for Licensing Production and Utilization Facilities; Request for Public Comment

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Request for Public Comment on Regulatory Reform Proposal Concerning the Rules of Practice, Rules for Licensing of Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment on suggestions for procedural changes in nuclear power plant licensing process.

SUMMARY: In November, 1981, the NRC created a Regulatory Reform Task Force charged with conducting a detailed evaluation of the NRC licensing process for nuclear power plants. The Commission directed the Task Force to develop proposals both for legislation and for rule changes to improve the process by which nuclear power plants are licensed.

The Task Force reviewed a large number of proposals for reforming the licensing process through rule changes. A number of such proposals were forwarded to the Commission in a Draft Report in November, 1982.[1] The fact that a proposal was included in the Draft Report indicates only that a consensus of Task Force members believed that further evaluation of the proposal was appropriate. Members of the Task Force frequently held strongly differing views on the merits of individual proposals. Hence, presentation of the proposal does not signify that the particular proposal necessarily commanded the support of a majority of Task Force members.

The Draft Report was reviewed internally by a Senior Advisory Group, composed of NRC personnel, and by an Ad Hoc Committee for the Review of Nuclear Reactor Licensing Reform Proposals. The latter group, established by the Commission, was composed of non-NRC persons with experience in the Commission's licensing process and procedures. In both the Senior Advisory Group and the Ad Hoc Committee, different members held quite different views on the merits of particular proposals, and so advised the Commission.

On November 17, 1983, the Commission discussed the package of proposals at a public meeting. The Commission decided, based on all the information before it, to solicit public comment on the entire package of proposals before deciding on a particular course of action with respect to any or all of the individual proposals.

The individual proposals thus are not Commission proposals, nor do they necessarily command the support of a majority of the Task Force, the Senior Advisory Group, or the Ad Hoc Committee. Rather, they are suggestions for improvements in the licensing process which have been brought to the Commission's attention and on which the Commission now seeks the views of the public.

As a drafting matter, the proposals have been cast in the form of "proposed rules." It should be emphasized, however, that the present document is *not* a notice of proposed rulemaking. If the Commission decides, based upon the comments received, that a particular proposal warrants adoption through rulemaking, then a formal notice of proposed rulemaking will be required.

DATES: Comment period expires June 11, 1984. Comments received after June 11, 1984 will be considered if it is practical to do so, but assurances of consideration cannot be given except as to comments filed on or before the due date specified herein.

ADDRESS: Submit written comments and suggestions to: the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Examine copies of comments received at: the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: James R. Tourtellotte, Regulatory Reform Task Force, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (202) 492-7676.

SUPPLEMENTARY INFORMATION:

Introduction

In November, 1981, the NRC created a Regulatory Reform Task Force charged to conduct a detailed evaluation of the NRC licensing process for nuclear power plants. The Commission directed that the Task Force develop proposals for legislation and for regulatory changes to improve the licensing process for nuclear power plants. The Task Force conducted its review and submitted a report identifying certain deficiencies in the existing licensing process and containing proposals for amendments to the NRC's regulations to remedy these deficiencies. This notice of proposed rulemaking contains amendments to the NRC's regulations designed to implement the Task Force's recommendations.

The Regulatory Reform Task Force found that the quality of the existing hearing process can and should be improved. The three principal parts of the hearing process, i.e., the screening process, the actual conduct of the hearing, and the decisionmaking process, were closely examined and changes in all three areas were proposed. In the discussion which follows, the improvements proposed within each of the three categories are summarized. A section-by-section analysis of the proposed changes follows. The section-by-section analysis explains the major proposed changes in more detail. However, minor conforming changes of an editorial or insignificant nature are not broken out for specific discussion.

Many of the proposed changes are applicable only to "initial licensing proceedings" (as defined in proposed § 2.4(r)) and, therefore, do not affect proceedings under Subpart B of 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings" to modify, suspend or revoke a license. For example, the proposed creation of the screening Atomic Safety and Licensing Board to rule on hearing requests, petitions for leave to intervene and contentions is applicable only to initial licensing. However, certain proposed changes will, if adopted, affect all agency proceedings, including enforcement proceedings. Examples in this category include the proposed requirement that judicial standards for determining whether a potential party has standing will be applied to determine whether a hearing request or intervention petition should be granted and the proposed elimination of the Atomic Safety and Licensing Appeal Board as an intermediate appellate tribunal.

No amendments to Subparts D and E of Part 2 are proposed at this time. Those subparts specify the additional procedures applicable to standardized plant designs subject to the requirements of Appendices M and N of 10 CFR Part 50. Standardization is the subject of a separate rulemaking. Any necessary changes to Subparts D and E will be addressed in that rulemaking.

I. Summary of Improvements

A. Screening Process

For purposes of the discussion which follows, the "screening process" refers to the process for determining whether a hearing should be held and, if so, what issues should be heard by the presiding

[1] The Draft Report contained proposed rule changes concerning backfitting, the hearing process, separation of functions/*ex parte*, and participation of the NRC staff in initial license proceedings. It also included legislative proposals.

officer. The Regulatory Reform Task Force identified three major ways in which the screening process could be improved. The first major improvement is the proposed creation of a screening Atomic Safety and Licensing Board ("screening board"). In initial licensing proceedings all requests for hearings, petitions for leave to intervene, and proposed contentions will be referred to a screening board. Under existing practice, the presiding officer designated to conduct the hearing usually rules on all such requests. The screening board will determine whether standing requirements have been met, whether a hearing or petition for intervention should be granted and which contentions are admissible. Late filed contentions and issues which the presiding officer conducting the hearing proposes to consider *sua sponte* will also be referred to a screening board for a determination of admissibility. As a central "clearinghouse" for hearing requests, intervention petitions, and contentions, the screening board will add a necessary measure of predictability to such rulings. Under present practice, this predictability is lacking because intervention rulings are made by numerous Atomic Safety and Licensing Boards. Public comment is particularly invited on the advisability of creating a screening board or whether the existing system permitting the presiding officer designated to conduct the hearing to rule on intervention matters and raise issues *sua sponte* should be retained.

Second, under existing Commission practice, a person who fails to meet judicial standards of standing may nonetheless be permitted to intervene (or to trigger a hearing) in Commission proceedings. See *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI–76–27, NRC 610 (1976). The proposed rule requires presiding officers to apply judicial requirements for standing in determining whether a person may trigger a hearing or intervene in an ongoing proceeding. Requiring a person to demonstrate standing will help ensure that all participants in NRC proceedings have an interest in the proceeding sufficient to justify their participation in the proceeding and the necessary commitment of additional Commission resources.

The third proposed improvement would raise the threshold for the admission of contentions to essentially require the proponent of the contention to tender evidence suggesting the existence of a genuine factual dispute. This is consistent with Supreme Court precedent. See *Costal v. Pacific Legal Foundation*, 445 U.S. 198, 214 (1980), citing *Weinberger v. Hynson, Westcott and Running, Inc.*, 412 U.S. 609 at 620–621 (1973). Under existing regulations, once a petitioner is admitted to the proceeding he or she is only required to draft contentions which set forth the basis for the contentions with reasonable specificity. 10 CFR 2.714(a)(3). No inquiry is made into the merit of the contention and the petitioner is under no obligation to demonstrate the existence of some factual support for the contention as a precondition for its acceptance. In practice, this requirement may be met by copying contentions from another proceeding involving another reactor. Thus, an intervenor need not fully understand a contention and frivolous contentions are easily admitted. The increased evidentiary threshold for admission of contentions will ensure that frivolous contentions are not litigated in NRC proceedings.

B. Conduct of the Hearing

A number of improvements are proposed to improve the conduct of the hearing itself. First, under the proposed rules, pretrial discovery will be more rigorously controlled by presiding officers. To prevent abusive or burdensome discovery, a party will be required to sign each discovery request, answer, objection, or motion. The signature certifies, among other things, that the party's discovery filing is based on good faith and not primarily for the purpose of delay. Permissible discovery against the staff will also be appropriately limited to matters which form the basis for the staff's position on a given issue; discovery requests may not require the staff to perform additional work on matters beyond what is needed to support the staff's position on the issue or to explain why matters not relied on by the staff were not considered.

Second, substantial changes are proposed in how evidence is presented in initial licensing proceedings. To the fullest extent possible, all evidence, direct and rebuttal, will be submitted in writing; a special need for live testimony, including cross-examination, must be demonstrated. In this regard, cross-examination plans which assure that cross-examination would be meaningful must be submitted to assist the presiding officer in deciding whether to permit cross-examination. Legal scholars and critics of the current system have suggested that the scientific and technical issues, well stated and properly understood, may generally be amenable to resolution on written pleadings, that credibility of the witnesses usually is not a central issue and that testimony of a scientific nature is well-suited to being reduced to writing. Under existing practice most *direct* testimony in licensing proceedings is submitted in writing. See 10 CFR 2.743(b). Limitations on cross-examination are also desirable because, although the existing rules authorize the Licensing Boards to control cross-examination, the Boards often fail to do so. In addition, in practice, the value of cross-examination is often diminished by unskilled questioning. This results in a cluttered trial record.

Third, a new provision is proposed which would allow the screening board or the presiding officer conducting the hearing to appoint a panel of technical subject matter experts. The screening board could request the assistance of the experts to help it determine whether there is a technical basis for reaching a conclusion that a proposed contention raises a genuine issue of disputed fact. The presiding officer conducting the hearing could appoint a panel to sit with him or her to hear the evidence on a particular issue. The panel would then prepare a report with recommendations or conclusions. Panel members could be appointed from inside or from outside the agency, but each member would be subject to the existing notice and disqualification procedures contained in § 2.704.

A number of miscellaneous improvements are also suggested. The *sua sponte* rule, which allows presiding officers to raise issues on their own motion, would be tightened so that in all but the most unusual situations the scope of the hearing would be confined to the disputed issues of fact properly placed into controversy by the parties; to encourage the use of summary procedures to dispose of issues prior to hearing, summary disposition motions could be filed at any stage of the proceeding; motions which are not controverted by other parties must be granted; and an express provision is added to recognize that the Commission may designate a qualified hearing examiner to preside in initial licensing proceedings in lieu of a three member licensing board.

C. Improvements to the Decisionmaking Process

Several improvements to the decisionmaking process are also proposed. The most fundamental is the proposed removal of the Atomic Safety and Licensing Appeal Board as an independent, intermediate administrative appellate tribunal. The

Appeal Board will function as a staff office of the Commission with the responsibility to draft proposed decisions for Commission review. It will no longer function as an administrative "court of appeals." This change will permit the Commission itself to expeditiously resolve the important policy questions which frequently arise in the course of its licensing and enforcement proceedings. In addition, the Commission will also be able to exercise a greater degree of supervision over the conduct of its proceedings. Finally, removal of the Appeal Board as a separate appellate tribunal should also expedite final agency action on adjudicated matters by eliminating a layer of review.

Another major improvement is the proposed addition of a rule which will allow the expeditious codification of generic factual issues resolved in initial licensing proceedings as regulations. This rule is intended to preclude the relitigation of generic factual issues resolved in one proceeding in subsequent proceedings involving similar facilities or reactors. The rule would only apply to generic factual issues which are litigated to a conclusion, i.e. issues not dismissed on summary disposition or withdrawn by a party, to ensure that the merits of the issues have been fully considered in the proceeding. Once resolved, the generic issue will be expeditiously issued as a proposed rule on the basis of the hearing record with a 65-day period for public comment. If the Commission adopts the rule after considering the public comments, the generic issue could not be litigated in subsequent adjudications unless special circumstances could be shown pursuant to § 2.758.

The third proposed improvement would prohibit an intervening party from filing proposed findings of fact and conclusions of law, or filing exceptions to initial decisions, on issues not placed in controversy by that party. Present practice permits any party to file proposed findings, conclusions of law, and exceptions on any issue in the proceeding, including issues not raised by it. The purpose of this change is to ensure that presiding officers and the agency appellate tribunal, i.e. the Commission, are able to focus on the disputed issues in the proceeding as presented and argued by the parties with the chief interest in the issue. The proponent of a contention is expected to present and argue its case on the contention much more persuasively than a party who elects to argue an issue only in legal papers filed after the evidentiary portion of hearing is completed. These filing limitations are expected to improve the decisionmaking process by allowing presiding officers and the Commission to focus their energies on the arguments made by the proponents (and opponents) of each particular issue.

Fourth, the immediate effectiveness rule will be restored for all initial decisions. Following the TMI accident, the rule was substantially modified to require a limited Appeal Board or Commission review of initial decisions authorizing construction permits or operation at more than 5 percent of full power. Experience gained since the TMI accident has shown this restriction on effectiveness has not had a positive effect on safety and has been procedurally cumbersome. Restoration of the immediate effectiveness rule does not affect the right of a party to seek a stay of an initial decision pursuant to the provisions of § 2.788.

Finally, under existing practice, the Director of Nuclear Reactor Regulation or Nuclear Material Safety and Safeguards, as appropriate, issues licenses authorized by initial decisions. Under the proposed rules, responsibility for license issuance will rest with the Executive Director for Operations, the chief staff officer of the Commission.

II. Section-by-Section Analysis

1. Definitions (10 CFR 2.4)

Two new definitional sections are proposed. Proposed § 2.4(r) defines "initial licensing" in accordance with the guidance contained in the 1947 Attorney General's Manual on the Administrative Procedure Act. See pp. 50–51 of the Manual. In general, all agency proceedings for the issuance or amendment of licenses fall within the definition, but proceedings in the nature of enforcement or renewal actions are not included. The definition of "initial licensing" is added so that procedures applicable to "initial licensing" are clearly distinguished from procedures which may be applicable to other types of proceedings. Proposed § 2.4(s) defines the term "presiding officer." This term is used in numerous provisions in Part 2, but has heretofore not been explicitly defined. Note that the screening atomic safety and licensing board (see proposed § 2.721) is a "presiding officer."

2. Notice of Hearing (10 CFR 2.104)

The primary purpose of revised § 2.104 is to limit presiding officers to deciding disputed issues of fact. Section 2.104 has also been reorganized to clearly distinguish between different types of applications. Paragraph (a) is limited to mandatory construction permit proceedings. The major difference between this provision and the existing provisions applicable to construction permit proceedings is that in contested proceedings, except for issues which must be considered under NEPA, presiding officers will consider only disputed issues placed in controversy by the parties. Therefore, the notice of hearing will no longer state that in contested proceedings the presiding officer will automatically consider the issues listed in existing § 2.104(b)(1). Paragraph (b) of revised § 2.104 is applicable to all other notices of hearing for proceedings within the scope of subpart A of Part 2, except for antitrust proceedings held in connection with a CP or OL license. (The notice for antitrust proceedings is contained in revised § 2.104(c)). Proposed § 2.104(b) differs from the existing provision (§ 2.104(c)) primarily in that, as in the case of CP proceedings, except for NEPA issues which must be considered by the presiding officer, only controverted issues will be considered by the presiding officer. As noted above, proposed § 2.104(c), specifies the notice of hearing for antitrust proceedings and is substantially the same as the existing provision (§ 2.104(d)). Proposed paragraph (d) is identical with existing paragraph (e).

3. Notice of Opportunity for Hearing (10 CFR 2.105)

Proposed § 2.105, "Notice of Opportunity for Hearing," differs in several minor respects from the existing provision. First, proposed § 2.105(e)(2) reflects the creation of the screening atomic safety and licensing board (see proposed § 2.721) by specifying that the screening board will rule on requests for hearing. Second, a new paragraph (d)(3) is proposed which provides that the notice of opportunity for hearing will state that a person's participation in any hearing held on the proposed action will be limited to the issues specified in the notice of hearing, unless good cause is shown for considering additional issues. This provision is intended to ensure that persons whose interest may be affected by the proceeding raise issues on a timely basis by responding to the notice of opportunity for hearing rather than waiting until a notice of hearing, if any, is subsequently published. Third, paragraph (e)(1) is changed to designate the Executive Director for Operations as the individual who may take the proposed action if a timely request for hearing is not filed. The existing provision designates the Director of Nuclear Reactor Regulation or Director

of Nuclear Material Safety and Safeguards. The purpose of this change is to enhance the concept of a strong Executive Director for Operations and ensure management accountability for licensing. Finally, the notice published pursuant to this section will now be called a "notice of opportunity for hearing" rather than a "notice of proposed action."

4. Exceptions (10 CFR 2.700a)

A new paragraph (c) is added to § 2.700a, "Exceptions," which provides that the Commission, notwithstanding any other provision to the contrary in Part 2, may prescribe such alternative procedures as it deems necessary in initial licensing proceedings. The notice of hearing of opportunity for hearing will specify the procedures. This provision is intended to allow the Commission to make full use of the procedural flexibility allowed under the Administrative Procedure Act. See *Vermont Yankee Nuclear Power Corporation* v. *NRDC*, 435 U.S. 519 (1978).

5. Designating of Presiding Officer, Disqualification, Unavailability (10 CFR 2.704)

Minor revisions to § 2.704 are proposed to specify that an administrative law judge may be designated by the Commission to preside at hearings. A conforming change in paragraph (d) is also proposed to allow the Chief Administrative Law Judge to designate a replacement for an administrative law judge who may become unavailable during the course of a proceeding.

6. Requests for Hearings and Petitions to Intervene (10 CFR 2.714)

Section 2.714 has been reorganized and substantially modified. The major changes from the existing intervention rule are as follows:

- A potential intervenor must meet judicial standards for standing in order to be admitted to an NRC proceeding. Proposed § 2.714(f). The purpose of this provision is to abolish the concept of discretionary intervention which the Commission first recognized in *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2) CLI-76-27, 4 NRC 610 (1976).
- Contentions must be filed at the time the request for hearing or petition for leave to intervene is filed. Proposed § 2.714(g)(2). The existing provision requires only that an "aspect" of the subject matter of the proceeding be identified at the time the hearing request or intervention petition is filed and final contentions need not be filed until 15 days prior to the special prehearing or prehearing conference. The purpose of requiring the filing of contentions with the request for hearing or petition to intervene is to require the identification of issues as early as possible in the proceeding. The applicant's safety and environmental reports are publicly available by this time in the Commission's Public Document and Local Public Document Rooms. However, since the staff's environmental reviews are not completed until after the time for filing requests or petitions has passed, amended or additional contentions based on the staff environmental documents may be filed if the facts or conclusions differ significantly from those in the applicant's documents. Proposed § 2.714(g)(1)(ii). Non-timely filings of contentions will not be entertained absent a determination by the screening ASLB or other presiding officer designated to rule on contentions that the filing should be permitted based on a balancing of the factors listed in paragraph (c)(4). The factors to be considered in ruling on late filed contentions are identical to those specified in the current rule. Therefore, the screening ASLB or other presiding officer will have a considerable body of NRC case law to assist it in making any such determinations.
- The threshold for admission of contentions is raised. Proposed contentions must show that a genuine dispute exists with the applicant on an issue of law, fact or policy and the showing must include references to the *specific* portions of the application which are disputed. The contention must be supported by a concise statement of the alleged facts or expert opinion, together with specific sources and documents of which the petitioner is aware, which will be relied on to establish the facts or expert opinion. The purpose of the increased threshold is to ensure that the resources of all parties are focused on real rather than imaginary issues.
- A provision has been added (proposed § 2.714(i)(4)) which provides that a contention raising only an issue of law will not be admitted for resolution in an evidentiary hearing but shall be decided on the basis of briefs and/or oral argument.
- In initial licensing proceedings, the screening board will rule on requests for hearings, petitions for intervention and contentions contained therein. (Proposed § 2.714(j)). In other types of proceedings, e.g. enforcement proceedings, these rulings will be made by the presiding officer designated by the Commission.

7. Appeals From Certain Rulings on Petitions for Leave To Intervene and/or Requests for Hearing (10 CFR 2.714a)

Section 2.714a is proposed to be modified so that appeals of such rulings lie with the Commission rather than the Atomic Safety and Licensing Appeal Board. This change is consistent with the removal of the Appeal Board as an intermediate appellate tribunal.

8. Consolidation of Parties of Construction Permit or Operating License Proceedings (10 CFR 2.715a)

Proposed § 2.715a is expanded in scope. Absent a showing by a party that its rights would be prejudiced, the proposed rule would require presiding officers to consolidate parties in initial licensing proceedings after first offering the parties an opportunity to consolidate voluntarily. State and local government entities appearing in NRC proceedings represent unique interests. Therefore, the Commission would not expect presiding officers to consolidate these participants with private intervenors.

9. Subpoenas (10 CFR 2.720)

Discovery against the NRC staff is tightened in proposed § 27.20(h)(2)(ii). Specifically, while interrogatories may seek to elicit factual information reasonably related to the staff's position at the hearing, interrogatories may not be used to require that staff to explain why alternative data, assumptions or analyses were not relied on in the staff review. In addition, interrogatories may not require the staff to perform additional research or analytical work beyond that needed to support the staff's position on any particular matter. These provisions are intended to avoid the unnecessary expenditure of scarce staff resources at pretrial stages of the hearing on matters not directly pertinent to the staff's position in the hearing. Of course, it would still be permissible for a party to argue at the hearing that the staff should have performed additional studies or relied on alternative data. Finally, a specific reference is added regarding the Commission's Public and Local Public Document Rooms. The purpose of this provision is to make clear that if an interrogatory requests information already in the Public Document Rooms, such information is "reasonably obtainable from any other source" and, therefore, need not be provided. A sufficient answer to such a question would be the title and page reference to the relevant document.

10. Atomic Safety and Licensing Boards (10 CFR 2.721)

Section 2.721 is revised to authorize the establishment of one or more screening atomic safety and licensing boards. A screening board will be composed of three members with the same qualifications as members of a regular atomic safety and licensing board. The principal function of the screening board will be to rule on requests for hearings, petitions for leave to intervene and contentions in all initial licensing proceedings. The screening board may hold prehearing conferences, appoint expert panels and utilize any other procedures available to presiding officers to enable it to rule on hearing requests, intervention petitions and contentions. The screening board will then transfer the proceeding with the list of admitted issues to the presiding officer designated to conduct the hearing. If no party has demonstrated standing and filed an admissible contention, the screening board will dismiss the proceeding except in construction permit applications in which there is a mandatory hearing requirement. Late filed contentions and revised or new contentions filed after the staff's environmental documents are issued will be referred back to the screening board for a determination of admissibility, even if filed after the hearing has commenced. Similarly, issues which the presiding officer proposes to raise *sua sponte* during the course of a proceeding will be referred to the screening board for a determination of admissibility.

The screening board will serve as a centralized and specialized forum for resolution of the difficult questions faced by presiding officers in resolving issues of standing and the admissibility of contentions. It is expected that the screening board(s) will develop substantial expertise in resolving these issues and add a measure of predictability and consistency to intervention rulings. This has been difficult to achieve under present practice because a multiplicity of licensing boards now make these rulings.

A new paragraph (e) is also proposed to explicitly recognize that the Commission may appoint a qualified administrative law judge in lieu of an atomic safety and licensing board to preside in its proceedings.

11. Special Assistants to the Presiding Officer and Expert Panels (10 CFR 2.722)

Section 2.722 is revised to permit the presiding officer, including a screening board, to appoint an expert panel consisting of one, three or five members with specific subject matter expertise. The panel will assist the presiding officer designated to conduct the hearing by hearing evidentiary presentations, either oral or written, within its subject matter expertise and may examine the witnesses of the parties as a technical interrogator. The panel will advise the presiding officer of its recommendations and conclusions through an on-the-record report. The report is advisory only. In the case of an expert panel appointed by a screening board, the panel will assist the board in determining whether sufficient evidence had been tendered to conclude that there exists a genuine issue of disputed fact.

It is expected that expert panels will be used only in those situations when the subject matter of the issue at hand is both highly technical and not within the general expertise of the technical members of the licensing board conducting the hearing. The proposed rule provides for one, three or five expert panel members to avoid an evenly divided panel report. Panel members may be selected from either inside or outside the agency.

All are subject, however, to the notice and disqualification provisions described in § 2.704.

12. Motions (10 CFR 2.730)

A new paragraph is added to § 2.730 to expressly provide that uncontroverted motions shall be granted by the presiding officer to the extent authorized by law. In addition, the term "presiding officer" is substituted for the narrow reference to "the Board" in paragraph (e).

13. Examination of Experts (10 CFR 2.733)

A minor addition to § 2.733 is proposed to make clear that examination and cross-examination of expert witnesses by technically qualified individuals may be permitted only to the extent that oral direct or cross-examination is otherwise permitted. See the discussion of revised § 2.743.

14. General Provisions Governing Discovery (10 CFR 2.740)

Section 2.740 has been revised to ensure that presiding officers have ample tools to prevent and remedy unnecessary, burdensome or abusive discovery. Proposed paragraph (b)(2) allows the presiding officers upon his or her own initiative, or upon a motion for a protective order, to limit the use of discovery, including the number of interrogatories a party may serve. In addition, proposed paragraph (g) requires that every discovery request, response, objection thereto, or motion for a protective order be signed by the party or its authorized representative. The signature constitutes a certification that, among other things, the signatory has read the filing and that it has been filed in good faith and not primarily to cause delay. Failure to sign negates the effect of the document. The presiding officer may impose sanctions if a certification is falsely made.

15. Evidence (10 CFR 2.743)

Section 2.743 is substantially revised. The major proposed changes, applicable only to initial licensing proceedings, are as follows:

- Direct and rebuttal testimony will be submitted in written form unless otherwise ordered by the presiding officer for good cause. A schedule for the filing of such testimony is established in proposed paragraph (b)(3).
- Cross-examination is permitted only upon the request of a party filed within 10 days after service of the written testimony concerning a particular issue. Cross-examination is available to an intervening party only on those issues on which the requesting party has proffered an admissible contention. This is a departure from the present practice in which oral cross-examination is the rule rather than the exception and which does not necessarily limit cross-examination by an intervening party to issues proffered by it. The NRC staff, a governmental representative admitted to the proceeding pursuant to § 2.715(c), and the license applicant may move to cross-examine on any admitted contention in the proceeding. The proposed rule places the burden of establishing the need for cross-examination on the requesting party, including the NRC staff, a governmental representative and the license applicant. A motion to cross-examine, among other things, must include a detailed cross-examination plan and a statement as to why written testimony could not establish the same points. See proposed paragraphs (b)(5)–(8). The cross-examination plan will be kept confidential by the presiding officer until the completion of the cross-examination, if allowed, at which time it will be inserted into the record. This provision is intended to ensure an adequate record is made for possible appellate review of orders granting or denying cross-examination.

16. Authority of Presiding Officer To Dispose of Certain Issues on the Pleadings (10 CFR 2.749)

Section 2.749 is modified in two respects. First, the rule as proposed would permit summary disposition motions to be filed at any time during the proceeding rather than, as provided in the existing rule "within such time as may be fixed by the presiding officer." This change is intended to give the parties maximum flexibility to file such motions and to make it possible to terminate litigation at any point during the proceeding when it becomes apparent that a genuine issue of fact is no longer in dispute. Second, the proposed rule eliminates the present prohibition against determining on summary disposition the ultimate issue as to whether a construction permit should issue. This prohibition is unnecessary.

17. Proposed Findings and Conclusions (10 CFR 2.754)

Paragraph (c) of § 2.754 is revised to limit filings of proposed findings of fact and conclusions of law by parties who do not have the burden of proof or who have only a limited interest in the proceeding to those issues placed in contention by the party. The proponent of a contention is responsible for making its case on the issue at the hearing. The revision recognizes that the proponent of a contention is in the best position to present the arguments in support of the contention and is intended to ensure that presiding officers are not inundated with a multiplicity of extraneous filings from persons with no stake in the resolution of a particular issue. Since license applicants have the burden of proof and the NRC staff has a general interest in the proceeding to ensure that the public health and safety and environmental values are protected, the limitation on filings in paragraph (c) are not applicable to either; each has an obvious interest in filing proposed findings and conclusions on most, if not all, contested issues. Presiding officers will be expected to strike those portions of proposed findings and conclusions of law filed in contravention of this section.

18. Authority of Presiding Officer To Regulate Procedures in a Hearing (10 CFR 2.754)

Section 2.754 is revised to make mandatory the Commission's presently permissive admonition that presiding officers should limit the number of witnesses whose testimony may be cumulative, strike argumentative, repetitious, cumulative, or irrelevant evidence. This is intended to tighten up the proceeding and produce a better record.

19. Codification of Generic Factual Issues Resolved in Initial Licensing Proceedings (10 CFR 2.758a)

A new § 2.758a is proposed. This section requires that generic factual issues resolved in initial licensing proceedings be considered for promulgation as final Commission rules after public comment is sought in accordance with the rulemaking provisions of the Administrative Procedure Act. The purpose of this provision is to ensure that generic issues resolved in an evidentiary proceeding are not relitigated in subsequent proceedings. Generic factual issues codified as final rules will be subject to challenge in Commission licensing proceedings only to the extent permitted under the existing provisions of § 2.758, "Consideration of Commission rules and regulations in adjudicatory proceedings," i.e. upon a showing of special circumstances.

20. Initial Decisions in Contested Proceedings on Applications for Facility Operating Licenses (10 CFR 2.760a)

Section 2.760a is revised to revoke the 1979 relaxation of the *sua sponte* rule for review of uncontested matters by adjudicatory boards. See 44 FR 67088 (November 23, 1979). Experience under the relaxed standard has indicated that issues have been raised *sua sponte* which do not warrant such consideration. For example, contentions raised and later dropped by intervenors have been adopted by some Licensing Boards with little apparent regard for the seriousness of the issues involved. Accordingly, the *sua sponte* authority of presiding officers to raise new issues will be limited to extraordinary circumstances and is to be used sparingly. A similar change is proposed to be made to § 2.785(b)(2). Any issue(s) proposed to be raised *sua sponte* by the presiding officer conducting the hearing is to be referred with an explanation to the screening Atomic Safety and Licensing Board for a determination whether the matter should be considered at the hearing.

21. Appeals to the Commission From Initial Decisions (10 CFR 2.762)

Section 2.762 is revised to provide that an intervening party may file exceptions only on those issues which the party placed in controversy or sought to place in controversy in the proceeding. This will reverse the rule established in *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 868 (1974), that an intervenor can appeal on all issues, whether or not raised by his or her own contentions. The rationale for this revision is the same as that discussed in regard to proposed § 2.754(c), *supra*.

22. Immediate Effectiveness of Decisions Directing Issuance or Amendment of Construction Permit or Operating License (10 CFR 2.764)

Section 2.764 is revised to return to the pre-TMI rule that initial decisions of presiding officers are immediately effective. Accordingly, it is proposed that paragraphs (e) and (f), which provide for Appeal Board and/or Commission consideration of effectiveness of initial decisions authorizing construction permits and operating licenses at greater than 5% power, be deleted. The Commission has tentatively concluded that the lessons learned from TMI have been sufficiently factored into the licensing and regulatory process to make limited Commission review on the question of effectiveness no longer necessary. Stays of initial decisions may continue to be sought in accordance with the provisions of § 2.788.

23. Elimination of the Atomic Safety and Licensing Appeal Board (10 CFR 2.785, 2.786, and 2.787)

The Commission proposes to delete §§ 2.785, 2.786 and 2.787. These provisions establish and describe the functions of the Atomic Safety and Licensing Appeal Board. Unlike most agencies, the Commission's adjudicative process resembles that of the Federal Court system. The Commission sits as the administrative "supreme court," the Appeal Boards sit as the administrative "courts of appeal" and Licensing Boards and administrative law judges sit as the "district" or trial courts. The amendments would substantially change the existing three-tiered adjudicative structure of the NRC by eliminating the Appeal Board as the middle rung of this process. While the Appeal Board would retain its existing review functions, it will function as a staff office of the Commission. It will not issue decisions, but will prepare draft opinions and rulings for the Commission. After appropriate review, the Commission will issue its decision. Thus, the Appeal Board will function as a Commission staff office responsible for reviewing and drafting decisions on adjudicatory matters, rather than as an intermediate appellate tribunal. Elimination of the intermediate tribunal would have several benefits. First, the

Commission will be able to supervise its adjudicatory process more closely. This supervision is especially crucial when, as happens frequently, issues of a policy nature arise during the course of its proceedings. Second, elimination of sequential Appeal Board and possible Commission review should expedite final agency action on adjudicatory matters. Third, some duplication of resource commitment would be eliminated since the need for separate review by the Commission's offices of Policy Evaluation and General Counsel could be eliminated or reduced. Conforming changes to § 2.786 are also proposed to eliminate references to stays of Appeal Board decisions.

24. Appendix A to Part 2

"Statement of General Policy and Procedure: Conduct of Proceedings for the Issuance of Construction Permits and Operating Licenses for Production and Utilization Facilities for Which a Hearing is Required Under Section 189a of the Atomic Energy Act of 1954, as Amended," is proposed to be deleted as unnecessary.

25. License Required (10 CFR 50.10)

Two conforming changes to § 50.10 are proposed to note that the Executive Director for Operations rather than the Director of Nuclear Reactor Regulation will issue limited work authorizations. This is consistent with the revisions discussed *supra*, which provide that the Executive Director rather than particular Office Directors will issue licenses authorized after hearing.

Paperwork Reduction Act Review

The Nuclear Regulatory Commission has submitted this proposed rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C. § 3501 *et seq.*

Regulatory Flexibility Statement

The proposed rule will reduce the procedural burden on NRC licensees by improving the hearing process. The impact on intervenors or potential intervenors will be neutral. While intervenors or potential intervenors will have to meet a higher threshold to gain admission to NRC proceedings and, thereby, incur some additional economic costs in preparing its request for hearing or intervention request, the proposed improvements should reduce an intervenors costs once the hearing commences. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the NRC hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 2

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

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 2 and 50 are contemplated:

It is proposed that 10 CFR Parts 2 and 50 be amended as follows:

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, 953 (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, Pub. L. 93-438, 88 Stat. 1242, as amended by Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841); 5 U.S.C. 552.

(Section 2.101 also issued under secs. 53, 62, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2093, 211, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 68 Stat. 936, 937, 938, 954 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.200-2.206 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606, 2.700, 2.772 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557, section 2.790 also issued under sec. 103 68 Stat. 936, as amended (42 U.S.C. 2133). Sections 2.800-2.807 also issued under 5 U.S.C. 553, section 2. 808 also issued under 5 U.S.C. 553 and sec. 102, 83 Stat. 853 (42 U.S.C. 4332). Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-209, 91 Stat. 1483 (42 U.S.C. 2039).

2. In § 2.4, paragraph (r) is redesignated as paragraph (u), paragraph (s) is redesignated as paragraph (r), and new paragraphs (s) and (t) are added to read as follows:

§ 2.4 Definitions.

* * * * *

(s) "Initial licensing" includes any proceeding on an application for a construction permit, operating license, or any other license for a facility or other activity, or for any amendment or modification thereof, but normally does not include licensing proceedings involving the renewal, revocation, suspension, annulment, withdrawal, or agency-initiated modification or amendment of licenses.

(t) "Presiding officer" means one or more members of the Commission, an administrative law judge, an atomic safety and licensing board, a screening atomic safety and licensing board, or a named officer who has been delegated authority to preside in an evidentiary hearing under this chapter.

* * * * *

3. Section 2.104 is revised to read as follows:

§ 2.104 Notice of hearing.

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

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

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

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

[1] If the notice of hearing does not specify the time and place of initial hearing, a subsequent notice will be published in the **Federal Register** which will provide at least thirty (30) days notice of the time and place of that hearing. After this notice is given the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing thirty (30) days notice.

(iv) The time within which answers to the notice or petitions for leave to intervene shall be filed.

(2) Except in the case of a construction permit proceeding noticed pursuant to paragraph (c) of this section and unless the Commission determines otherwise, the notice of hearing will state in implementation of paragraph (a)(1)(iii) of this section:

(i) That, if the proceeding is not a contested proceeding, the presiding officer will determine (A) without conducting a de novo evaluation of the application, whether the application and the record of the proceeding contain sufficient information, and the review of the application by the Commission's staff has been adequate, to support the safety findings required by the Atomic Energy Act of 1954, as amended, proposed to be made and the issuance of the construction permit proposed by the Executive Director for Operations, and (B) if the application is for a construction permit for a nuclear power reactor, a testing facility, a fuel reprocessing plant, or other facility whose construction or operation has been determined by the Commission to have a significant impact of the environment whether the review conducted by the Commission pursuant to the National Environmental Policy Act (NEPA) has been adequate.

(ii) That regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with Part 51 of this chapter:

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

(B) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; and

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

(b)(1) In the case of any other application within the scope of this subpart in which the presiding officer has determined that a hearing should be held, the presiding officer will issue a notice of hearing to be published in the **Federal Register** as required by law at least fifteen (15) days prior to the date set for hearing in the notice. The notice will state:

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

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

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

(iv) The time within which answers to the notice or petition for leave to intervene shall be filed.

(2) Except in the case of an operating license proceeding noticed pursuant to paragraph (c) of this section, and unless the Commission determines otherwise, if the application is for an operating license for a nuclear power reactor, a testing facility, or a fuel reprocessing plant, or other facility whose operation has been determined by the Commission to have a significant impact on the environment, the notice of hearing will state in implementation of paragraph (b)(1)(iii) of this section that the presiding officer will determine whether, in accordance with the requirements of Part 51 of this chapter, the operating license should be issued as proposed.

(c) In an application for a construction permit or an operating license for a facility on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest to consider the antitrust aspects of the application, the notice of hearing will, unless the Commission determines otherwise, state:

(1) A time of the hearing, which will be as soon as practicable after the receipt of the Attorney General's advice and compliance with sections 105 and 189a of the Act and this part;[8]

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

(3) That the presiding officer will consider and decide whether the activities under the proposed license would create or maintain a situation inconsistent with the antitrust laws described in section 105a of Act; and

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

(d) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a facility license or for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee or for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter to the Governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization if it is to be so located or conducted within an Indian reservation).

6. In § 2.105, the section heading, the introductory text of paragraph (b), and paragraphs (a), (d), and (e) are revised to read as follows:

§ 2.105 Notice of opportunity for hearing.

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

(1) A license for a facility;

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

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

(4) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter.

(b) The notice of opportunity for hearing will set forth—

* * * * *

(d) The notice of opportunity for hearing will provide that within thirty (30) days from the date of publication of the notice in the **Federal Register**, or

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[8] As permitted by subsection 105c of the Act, with respect to proceedings in which an application for a construction permit was filed prior to December 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the **Federal Register** or notice of filing of the application for an operating license or December 19, 1970, whichever is later, the Commission may issue a construction permit or operating license which contains the conditions specified in § 50.55b of this chapter before the antitrust aspects of the application are finally resolved.

such lesser period authorized as the Commission may specify:

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

(2) Any person whose interest may be affected by the proceeding may file a request for a hearing.

(3) Any person's participation as a party in any hearing held on the proposed action shall be limited to the issues specified in the notice of hearing unless the screening Atomic Safety and Licensing Board determines that good cause for considering additional issues is shown in accordance with the provisions of § 2.714.

(e)(1) If no request for a hearing is filed within the time prescribed in the notice, the Executive Director for Operations may take the proposed action, inform the appropriate State and local officials, and publish in the **Federal Register** a notice of issuance of the license or other action.

(2) If a request for a hearing is filed within the time prescribed in the notice, the screening Atomic Safety and Licensing Board will rule on the request in accordance with the provisions of § 2.714.

* * * * *

5. In § 2.106, paragraph (a) is revised to read as follows:

§ 2.106 Notice of issuance.

(a) The Executive Director for Operations will cause to be published in the **Federal Register** notice of, and will inform the State and local officials specified in § 2.104(d) of the issuance of:

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

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

* * * * *

6. Section 2.700 is revised to read as follows:

§ 2.700 Scope of Subpart.

The general rules in this subpart govern procedure in all adjudications initiated by the issuance of a order to show cause, an order pursuant to § 2.205(e), a notice of hearing, a notice of opportunity for hearing issued pursuant to § 2.105, or a notice issued pursuant to § 2.102(d)(3).

7. In § 2.700a, paragraph (c) is added to read as follows:

§ 2.700a Exceptions.

* * * * *

(c) Notwithstanding any other provisions to the contrary in this Part, in any initial licensing proceeding the Commission may prescribe such procedures as it deems necessary. The notice of opportunity for hearing or notice of hearing will specify the procedures.

8. In § 2.703, paragraph (a) is revised to read as follows:

§ 2.703 Notice of hearing.

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

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

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

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

(4) The time within which an answer or petition for leave two intervene shall be filed.

* * * * *

9. In § 2.704, paragraphs (a), (d) introductory text and (d)(1)(i) are revised to read as follows:

§ 2.704 Designation of presiding officer, disqualification, unavailability.

(a) The Commission may provide in the notice of hearing that one or more members of the Commission, an administrative law judge, an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, shall preside. If the Commission does not so provide, the Chairman of the Atomic Safety and Licensing Board Panel will issue an order designating an atomic safety and licensing board appointed pursuant to section 191 of the Atomic Energy Act of 1954, as amended, or, if the Commission has not provided for the hearing to be conducted by an atomic safety and licensing board, the Chief Administrative Law Judge will issue an order designating an administrative law judge appointed pursuant to section 3105 of title 5 of the United States Code.

* * * *

(d) If a presiding officer or a designated member of an atomic safety and licensing board becomes unavailable during the course of a hearing, the Commission, the Chief Administrative Law Judge, or the Chairman of the Atomic Safety and Licensing Board Panel, as appropriate, will designate another presiding officer or atomic safety and licensing board member. If he becomes unavailable after the hearing has been concluded:

(1)(i) The Commission or the Chief Administrative Law Judge, as appropriate may designate another presiding officer to make the decision; or

* * * * *

10. Section 2.714 is revised to read as follows:

§ 2.714 Requests for hearings and petitions to intervene.

(a) *Requests for hearings.* Any person whose interest may be affected in a proceeding noticed pursuant to §§ 2.102(d)(3), 2.105, 2.202, or 2.204 may file a written request for hearing which includes the information specified in paragraph (d) of this section. The request shall be filed within the time specified in paragraph (c) of this section. The requestor must also file a list of the contentions which the requestor seeks to have litigated in the hearing within the time specified in paragraph (g) of this section.

(b) *Petitions to intervene.* Any person whose interest may be affected by a proceeding in which a notice of hearing has been published and who desires to participate as a party in such a proceeding shall file a written petition for intervention which includes the information specified in paragraph (d) of this section. The petition shall be filed within the time specified in paragraph (c) of this section. The petitioner must also file a list of the contentions which petitioner seeks to have litigated in the hearing within the time specified in paragraph (g) of this section.

(c) *Time for filing requests for hearing and petitions to intervene.* (1) A request for hearing shall be filed not later than the time specified in the notice of opportunity for hearing or notice published pursuant to §§ 2.102(d)(3), 2.202 or 2.204.

(2) A petition for leave to intervene shall be filed not later than the time specified in the notice of hearing.

(3) Non-timely filings will not be entertained absent a determination by the Commission or the presiding officer designated to rule on the intervention petition or request for hearing, that the intervention or hearing should be granted based upon a balancing of the following factors in addition to those set our in paragraph (f) of this section:

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

(ii) The availability of other means whereby the requestor's or petitioner's interest will be protected.

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

(iv) The extent to which the requestor's or petitioner's interest will be represented by existing parties.

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

(d) *Contents of request for hearing or petition to intervene.* A request for hearing or petition to intervene shall be filed with the Secretary of the Commission and served on such others as may be specified in the notice. It shall be filed in the format required by § 2.708 and shall set forth with particularity:

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

(2) The nature and extent of the requestor's or petitioner's property, financial or other interest which could be affected by the outcome of the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the requestor's or petitioner's interest.

(e) *Answer to request for hearing or petition to intervene.* The applicant or licensee and any party to the proceeding may file an answer to a petition for leave to intervene or request for a hearing within ten (10) days after service of the request or petition. The staff may file an answer within fifteen (15) days after service of the request for hearing or the petition.

(f) *Ruling on request for hearing or petition to intervene.* The Commission or the presiding officer designated to rule on the intervention petition or request for hearing shall, in ruling on the request or petition shall consider the following factors, among other things:

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

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

(3) The possible effect of any order which may be entered in the proceeding on the requestor's or petitioner's interest. No request for hearing or petition to intervene may be granted unless the Commission or the presiding officer designated to rule on the request or petition determines that the requestor or the petitioner meets judicial standards for standing.

(g) *Filing of contentions.* (1) The requestor or the petitioner shall also file a list of the contentions which the requestor or the petitioner seeks to have litigated in the hearing. Each contention shall consist of a specific statement of the issue of law, fact or policy to be raised or controverted. In addition, except for contentions advanced in enforcement proceedings noticed under §§ 2.105, 2.202 or 2.204, the requestor or the petitioner must provide the following information with respect to each contention:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and which at the time of the filing the requestor or petitioner intends to rely upon in proving its contention at the hearing, together with references to the specific sources and documents of which petitioner is aware which will be relied on to establish such facts or expert opinion.

(iii) Sufficient information (which may include information pursuant to § 2.714(g)(1) (i) and (ii) to show that a genuine dispute exists with the applicant on an issue of law, fact or policy. This showing must include references to the specific portions of the application (including the applicant's environmental and safety report) which the requestor or petitioner disputes and the supporting reasons for each such dispute, or, if the requestor or petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each such failure and the supporting reasons for the requestor's or petitioner's belief. On issues arising under NEPA, a petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or appraisal that differ significantly from the data or conclusions in the applicant's document. Amended or new contentions based on NRC environmental documents shall be filed and ruled upon in initial licensing proceedings in accordance with paragraph (j) of this section.

(2) The information required by paragraph (g)(1) of this section shall be filed at the time the petition or request is filed.

(3) Non-timely filing of the information required by paragraph (g)(1) of this section will not be entertained absent a determination by the Commission or the presiding officer designated to rule on the admissibility of contentions that the filing should be permitted based upon a balancing of the factors set out in paragraph (c)(3) of this section.

(4) A requestor or petitioner that fails to comply with the requirements of (g)(1) of this section with respect to at least one contention will not be permitted to participate as a party.

(h) *Response to contentions.* The applicant or licensee and any party to a proceeding may file an answer to the contentions within ten (10) days after service of the contentions. The staff may file such an answer within fifteen (15) days after service of the contentions.

(i) *Admissibility of Contentions.* The Commission or the presiding officer designated to rule on the admissibility of contentions shall refuse to admit a contention if:

(1) The contention and supporting material fail to satisfy the requirements of paragraph (g) of this section. In determining whether a genuine dispute exists on a material issue of law, fact or policy, the Commission or the presiding officer shall consider whether the information presented pursuant to paragraph (g) of this section prompts reasonable minds to inquire further as to the validity of the contention; or

(2) It appears unlikely that petitioner can prove a set of facts in support of its contention; or

(3) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

(4) A contention raising only an issue of law shall not be admitted for resolution in an evidentiary hearing, but rather, shall be decided on the basis of briefs and/or oral argument as directed by the Commission or presiding officer.

(j) *Rulings on contentions in initial licensing proceedings by the screening Atomic Safety and Licensing Board.*—(1) *Requests for hearings.* The screening Atomic Safety and Licensing Board shall rule on requests for hearings and contentions contained in the requests in all initial licensing proceedings. After providing the staff and the licensee or license applicant an opportunity to respond to the request for hearing in accordance with paragraphs (e) and (h) of this section, the screening Atomic Safety and Licensing Board shall issue an order granting or denying, in whole or in part, each request for hearing and contention therein. An order granting a request for a hearing shall specify the parties to the proceeding and the issues in controversy.

(2) *Petitions to intervene.* (i) The screening atomic safety and licensing board shall rule on petitions to intervene and the contentions contained in the petitions which are filed in all initial licensing proceedings in which a notice of hearing has been published. The screening atomic safety and licensing board shall issue an order granting or denying, in whole or in part, each petition and contention therein. An order granting a petition shall specify

the parties to the proceeding and the issues admitted to the proceeding.

(ii) Issues not specified in the notice of hearing shall not be admitted to the proceeding unless the screening atomic safety and licensing board first determines that such issues should be admitted based upon a balancing of the factors set out in paragraph (c)(3) of this section.

(k)(1) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission or the presiding officer may direct in the interests of: (i) Restricting irrelevant, duplicative, or repetitive evidence and argument, (ii) having common interests represented by a spokesperson, and (iii) retaining authority to determine priorities and control the scope of the hearing.

(2) In any case in which, after consideration of the factors set forth in this paragraph, the Commission or the presiding officer finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention shall limit his participation accordingly.

(l) Unless otherwise expressly provided by the Commission, the granting of a petition for leave to intervene and/or hearing request does not enlarge upon the scope of issues specified in the notice of hearing or notice of opportunity for hearing.

(m) A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to paragraph (k) of this section.

11. In § 2.714a, paragraph (a) is revised to read as follows:

§ 2.714a Appeals from certain rulings on petitions for leave to intervene and/or requests for hearing.

(a) Notwithstanding the provisions of § 2.730(f), an order of the presiding officer designated to rule on petitions for leave to intervene and/or requests for hearing may be appealed, in accordance with the provisions of this section to the Commission within ten (10) days after service of the order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any other party may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal. No other appeals from rulings on petitions and/or requests for hearing shall be allowed.

* * * * *

12. In § 2.715, paragraph (c) is revised to read as follows:

§ 2.715 Participation by a person not a party.

* * * * *

(c) The presiding officer will afford representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses as authorized under § 2.743 and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to §§ 2.754 and 2.762 and petitions for review by the Commission pursuant to § 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

* * * * *

13. Section 2.715a is revised to read as follows:

§ 2.715a Consolidation of parties in initial licensing proceedings.

On motion or on its or his own initiative, the Commission or the presiding officer shall, after first affording the parties an opportunity to consolidate voluntarily and absent a showing by a party subject to consolidation that its rights would be prejudiced, order any parties in an initial licensing proceeding who have substantially the same interest that may be affected by the proceeding and who raise substantially the same questions, to consolidate their presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument. A consolidation under this section may be for all purposes of the proceeding, all of the issues of the proceeding, or with respect to any one or more issues thereof.

14. In § 2.717, paragraph (a) is revised to read as follows:

§ 2.717 Commencement and termination of jurisdiction of presiding officer.

(a) Unless otherwise ordered by the Commission, the jurisdiction of the presiding officer designated to conduct a hearing over the proceeding, including motions and procedural matters, commences when the proceeding commences. If no presiding officer has been designated, the Chief Administrative Law Judge has such jurisdiction or, if he is unavailable, another administrative law judge has such juriscition. A proceeding is deemed to commence when a notice of hearing or a notice of opportunity for hearing pursuant to § 2.105 is issued. When a notice of hearing provides that the presiding officer is to be an administrative law judge, the Chief Administrative Law Judge will designate by order the administrative law judge who is to preside. The presiding officer's jurisdiction in each proceeding will terminate upon the expiration of the period within which the Commission may direct that the record be certified to it for final decision, of when the Commission renders a final decision, or when the presiding officer shall have withdrawn himself from the case upon considering himself disqualified, whichever is earliest.

* * * * *

15. In § 2.720, paragraph (h)(2)(ii) is revised to read as follows:

§ 2.720 Subpoenas.

* * * * *

(h) * * *

(2) * * *

(ii) In addition, a party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, such as from the Commission's Public Document Room or Local Public Document Rooms, the presiding officer may require that the staff answer the interrogatories. Such interrogatories may seek to elicit factual information reasonably related to the NRC staff's position in the proceeding, including data used, assumptions made, and analyses performed by the NRC staff. Such interrogatories shall not, however, be addressed to, or be construed to require: (A) Reasons for not using alternative data, assumptions, and analyses, where such alternative data, assumptions, and analyses were not relied on in the staff review, or (B) performance of additional research or analytical work beyond that which is needed to support the staff's position on any particular matter.

* * * * *

16. In § 2.721, paragraph (a) is redesignated as paragraph (a)(1), paragraph (a)(2) is added, paragraph (d) is revised, and paragraph (e) is added to read as follows:

§ 2.721 Atomic Safety and Licensing Boards.

(a) * * *

(2) The Commission or the Chairman of the Atomic Safety and Licensing

Board Panel shall establish one or more screening atomic safety and licensing boards in the manner described in paragraph (a)(1) of this section. The screening atomic safety and licensing board shall rule on all requests for hearing and petitions for leave to intervene in initial licensing proceedings, shall rule upon and refer admissible contentions to the appropriate forum for resolution in accordance with the provisions of this chapter, may designate issues to be heard by an expert panel pursuant to § 2.722 and shall perform such other adjudicatory functions as the Commission deems appropriate.

* * * * *

(d) An atomic safety and licensing board, including a screening atomic safety and licensing board, shall have the duties and may exercise the powers 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 Administrative Law Judge may be exercised with respect to such a proceeding by the chairman of the board having jurisdiction over it. Two members of an atomic safety and licensing board constitute a quorum, if one of those members is the member qualified in the conduct of administrative proceedings.

(e) Nothing in this section limits the discretion of the Commission to designate one or more administrative law judges appointed pursuant to section 3105 of title 5 of the United States Code to preside in proceedings for granting, suspending, revoking, or amending licenses or authorizations and to perform such other adjudicatory functions as the Commission deems appropriate.

17. In § 2.722, paragraph (c) is added to read as follows:

§ 2.722 Special assistants to the presiding officer and expert panels.

* * * * *

(c) In consultation with the Panel Chairman, the presiding officer may appoint an expert panel of one, three or five experts with specific subject matter expertise. Panel members may be selected from inside or outside the Commission. Such appointments may occur at any appropriate time during the proceeding but shall, at the time of the appointment, be subject to the notice and disqualification provisions as described in § 2.704. The expert panel, with the presiding officer designated to conduct the hearing, will hear evidentiary presentations by the parties on the specific issues related to the subject matter for which the panel possesses special expertise and may examine the witnesses of the parties as a technical interrogator. The panel will advise the presiding officer of its conclusions on the specific issues through an on-the-record report. This report is advisory only; the presiding officer shall retain final authority on issues for which the expert panel was designated. In the case of an expert panel appointed to assist a screening board, the panel shall assist the board in determining whether a sufficient showing has been made to admit a particular contention(s).

18. In § 2.730 paragraph (e) is revised and paragraph (i) is added to read as follows:

§ 2.730 Motions.

* * * * *

(e) The presiding officer may dispose of written motions either by written order or by ruling orally during the course of a prehearing conference or hearing. The presiding officer should ensure that parties not present for the oral ruling are notified promptly of the order.

* * * * *

(i) *Uncontroverted motions.* If no party controverts the grounds asserted and the relief sought by the movant within the time prescribed in paragraph (c) of this section, the presiding officer shall grant the motion to the extent authorized by law.

19. Section 2.733 is revised to read as follows:

§ 2.733 Examination by experts.

Subject to the requirements of § 2.743, a party may request the presiding officer to permit a qualified individual who has scientific or technical training or experience to participate on behalf of that party in the examination and cross-examination of expert witnesses. The presiding officer may permit such individual to participate on behalf of the party in the examination and cross-examination of expert witness where it would serve the purpose of furthering the conduct of the proceeding. Upon finding: (a) That the individual is qualified by scientific or technical training or experience to contribute to the development of an adequate decisional record in the proceeding by the conduct of such examination, (b) that the individual has read any written testimony on which he intends to examine or cross-examine and any documents to be used or referred to in the course of the examination or cross-examination, and (c) that the individual has prepared himself to conduct a meaningful and expeditious examinations or cross-examination. Examination or cross-examination conducted pursuant to this section shall be limited to areas within the expertise of the individual conducting the examination or cross-examination. The party on behalf of whom such examination or cross-examination is conducted and his attorney shall be responsible for the conduct of examination or cross-examination by such individuals.

20. In § 2.740, paragraph (b)(2) is redesignated (b)(3) and new (b)(3) is reprinted for the convenience of the reader, a new paragraph (b)(2) is added, paragraph (c) is revised, and a new paragraph (g) is added to read as follows:

§ 2.740 General provisions governing discovery.

* * * * *

(b) *Scope of discovery.* * * *

(2) *Supervision of discovery.* The frequency or extent of use of the discovery methods set forth in paragraph (a) of this section may be limited by the presiding officer if he or she determines that: (i) The discovery sought is unreasonably cumulative or duplicative, or obtainable from some other formal or informal source or method that is either more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, given the needs of the case, and the number and complexity of the issues in controversy. The presiding officer may act upon its own initiative or pursuant to a motion under paragraph (c) of this section to specifically limit the use of discovery, for example, the number of interrogatories any party may serve.

(3) *Trial preparation materials.* A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the

mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(c) *Protective order.* Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may issue an order to further any of the purposes of paragraph (b) of this section, or which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters may be inquired into, or that the scope of discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the presiding officer; (6) that, subject to the provisions of §§ 2.744 and 2.790, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (7) that studies and evaluations not be prepared. If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

* * * * *

(g) *Signing of discovery requests, responses, and objections.* Every request for discovery, response, or objection thereto, or motion for a protective order, shall be signed by the party or its authorized representative pursuant to § 2.713 and shall include the party's or representative's address. The signature of the attorney or other authorized representative constitutes a certification that he or she has read the request, response, objection, or motion and that it is (1) to the best of his or her knowledge, information, or belief formed after a reasonable inquiry, consistent with these rules; (2) filed in good faith and not primarily to cause delay or for any other improper purpose; and (3) insofar as discovery is requested, not unduly burdensome or expensive, given the needs of the case, its nature and complexity, and the discovery already had in the case. If a request, response, or objection is not signed it shall be of no effect. If a certification is falsely made in violation of this paragraph, the presiding officer, where appropriate and upon motion or upon its own initiative, shall impose upon the person who made the certification or the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction pursuant to § 2.707 or 2.713.

21. In § 2.743, paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 2.743 Evidence.

(a) *General.* Every party to a proceeding shall have the right to present written or documentary evidence and written rebuttal evidence under oath or affirmation. Oral evidence and/or cross-examination of oral or written evidence will be allowed only as provided in paragraph (b) of this section, provided, however, that every party to a proceeding under Subpart B for modification, suspension, or revocation of a license, or imposition of a civil penalty shall have the right to present such oral evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts.

(b) *Testimony and cross-examination.* (1) The parties shall submit all direct and rebuttal testimony of witnesses, in written form, unless otherwise ordered by the presiding officer upon a showing of good cause that oral presentation of the evidence on any particular fact is reasonably necessary for the efficient identification, clarification and resolution of issues.

(2) If good cause is shown the presiding officer may schedule the taking of oral evidence either by deposition or by presiding at a hearing session where a transcript of oral testimony and cross-examination is made.

(3) The presiding officer may set dates for the filing of testimony on each factual issue in controversy as follows:

(i) The license applicant shall file written direct testimony first.

(ii) All parties other than the license applicant shall file their written direct testimony on said issue not later than 20 days after the date of filing of the testimony under the preceding subsection.

(iii) All written rebuttal testimony shall be filed no later than 20 days after the date of the filing of the testimony under the preceding subsection.

(iv) The presiding officer may allow such additional rounds of testimony as deemed necessary to develop an adequate record.

(4) Written testimony shall be incorporated in the record as if read or, in the discretion of the presiding officer, may be offered and admitted in evidence as an exhibit.

(5) A party may submit a request to cross-examine on any issue of material fact by filing a written motion within 10 days after service of the written testimony concerning the issue. A party may request to cross-examine only as to issues of material fact germane to the subject matter of an admitted contention advanced by that party; provided, however, the staff, license applicant or a governmental representative admitted pursuant to § 2.715 may move to cross-examine on any admitted contention in the proceeding. The motion shall specify: (i) The disputed issue of material fact regarding which cross-examination is requested, (ii) a description in the nature of an offer of proof (see paragraph (e) of this section) of what the movant will establish by the cross-examination, (iii) a statement as to why the cross-examination will result in resolving the issue of material fact involved, (iv) a statement as to why written testimony could not establish the same points, (v) a cross-examination plan consisting of a proposed line of questions along with postulated answers which might reasonably be anticipated and which may logically lead to achieving the objective of the cross-examination, (vi) an estimate of time necessary to complete the cross-examination, and (vii) the name of the individual who shall conduct the cross-examination.

(6) Answers to a motion for cross-examination may be filed by other parties within 10 days after service of the motion.

(7) The presiding officer shall promptly issue an order granting, denying or conditioning the request for cross-examination. If the request is granted the order shall specify:

(i) The issues on which cross-examination is granted;

(ii) The person(s) allowed to conduct cross-examination, and time allowed;

(iii) The date, time and place of the hearing at which cross-examination shall take place; and

(iv) That the party sponsoring the witness(es) subject to cross-examination shall be allowed a reasonable amount of time for oral redirect examination immediately following the cross-examination.

(8) The cross-examination plan submitted to the presiding officer shall be kept in confidence until the completion of the cross-examination, if granted, at which time it shall be physically inserted in the record.

(9) This subsection does not apply to proceedings under Subpart B for modification, suspension, or revocation

of a license, or the imposition of a civil penalty.

(c) *Admissibility.* The presiding officer shall admit only relevant, material, and reliable evidence which is not unduly repetitious. Immaterial or irrelevant parts of an admissible document will be segregated and excluded if practicable.

(d) *Objections.* An objection to the admission of evidence shall briefly state the grounds of objection. Unless oral presentation of the evidence has been ordered by the presiding officer, objections to written testimony filed pursuant to paragraph (b) of this section shall be made within 10 days after service of the objectionable testimony in accordance with the provisions of § 2.730 or the objections shall be deemed waived. The presiding officer shall rule on the objections promptly. Unless otherwise ordered by the presiding officer, the filing of objections shall not extend the time for filing written testimony. The transcript or record of the proceeding shall include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on the record.

* * * * *

22. In § 2.749, paragraphs (a) and (d) are revised to read as follows:

§ 2.749 Authority of presiding officer to dispose of certain issues on the pleadings.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. There shall be annexed to the motion a separate short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may serve as an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. There shall be annexed to any answer opposing the motion a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may within ten days after service respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto shall be entertained.

* * * * *

(d) The presiding officer shall render the decision sought if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law.

23. In § 2.752, paragraphs (a)(5) and (c) are revised to read as follows:

§ 2.752 Prehearing conference.

(a) * * *

(5) The setting of a hearing schedule, including a schedule for the filing of direct and rebuttal testimony; and

* * * * *

(c) The presiding officer shall enter an order which recites the action taken at the conference, the amendments allowed to the pleadings and agreements by the parties, and which limits the issues or defines the matters in controversy to be determined in the proceeding. Objections to the order may be filed by a party within five (5) days after service of the order, except that the regulatory staff may file objections to such order within ten (10) days after service. Parties may not file replies to the objections unless the presiding officer so directs. The filing of objections shall not stay the decision unless the presiding officer so orders. The presiding officer may revise the order in the light of the objections presented and, as permitted by § 2.718(i) may certify for determination to the Commission or the Atomic Safety and Licensing Appeal Board, as appropriate, such matters raised in the objections as it deems appropriate. The order shall control the subsequent course of the proceeding unless modified for good cause.

24. In § 2.754, paragraph (c) is revised to read as follows:

§ 2.754 Proposed findings and conclusions.

* * * * *

(c) Proposed findings of fact shall be clearly and concisely set forth in numbered paragraphs and shall be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law shall be set forth in numbered paragraphs as to all material issues of law or discretion presented on the record. Proposed findings of fact and conclusions of law submitted by a person who does not have the burden of proof and who has only a limited interest in the proceeding shall be confined to matters which affect his interests.

25. Section 2.757 is revised to read as follows:

§ 2.757 Authority of presiding officer to regulate procedures in a hearing.

To prevent unnecessary delays or an unnecessarily large record, the presiding officer shall, consistent with § 2.743:

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

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

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

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

26. Section 2.758a is added to read as follows:

§ 2.758a Codification of generic factual issues resolved in initial licensing proceedings.

(a) Within 15 days after a generic factual issue(s) is resolved in an initial licensing proceeding, the presiding officer who conducted the hearing shall inform the Executive Director for Operations in writing of the factual basis upon which such issue(s) was resolved. For purposes of this section, a generic factual issue means a controverted issue of fact which is common to facilities of similar type or design and which is the subject of an evidentiary presentation before a presiding officer which is not dismissed on motion or settled by stipulation of the parties. A generic issue is considered resolved at the earlier of the time when (1) the decision of the presiding officer has become the final agency action; or (2) the opportunity for a party to seek agency review of the presiding officer's finding on the generic fact has passed and no party has sought review.

(b) Within 15 days after receipt of the notification, the Executive Director for Operations shall prepare and transmit a notice of proposed rulemaking to the Commission which is consistent with the requirements set forth in Subpart H of this part. The notice shall provide for a 45-day period for public comment.

(c) Within 45 days after the close of the public comment period and after due consideration of the comments, the Commission shall take such further

action on the proposed rule as it deems appropriate.

27. Section 2.760a is revised to read as follows:

§ 2.760a Initial decision in contested proceedings on applications for facility operating licenses.

In any initial decision in a contested proceeding on an application for an operating license for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding and on matters which have been determined to be the issues in the proceeding by the Commission or the presiding officer. Where the presiding officer determines that a serious safety, environmental, or common defense and security matter exists and has not been put into controversy by the parties, he or she shall certify the matter to the screening atomic safety and licensing board with an explanatory statement. This authority is to be used sparingly. The screening atomic safety and licensing board shall determine whether the matter should be examined and decided by the presiding officer or may take such other action as may be appropriate. The Executive Director for Operations, after making the requisite findings, will issue, deny, or appropriately condition the license.

28. In § 2.762, paragraph (a) is revised to read as follows:

§ 2.762 Appeals to the Commission from initial decisions.

(a) Within ten (10) days after service of an initial decision any party may take an appeal to the Commission by filing of exceptions to that decision or designated portions thereof. Exceptions submitted by a party who does not have the burden of proof or who has only a limited interest in the proceeding shall be confined to issues which that party placed in controversy or sought to place in controversy in the proceeding. Each exception shall be separately numbered and shall (1) state concisely, without supporting argumentation, the single error of fact or law which is being asserted in that exception; and (2) identify with particularity the portion of the decision (or earlier order or ruling) to which the exception is addressed. A brief in support of the exceptions shall be filed within thirty (30) days thereafter (forty (40) days in the case of the staff). The brief shall be confined to a consideration of the exceptions previously filed by the party and, with respect to each exception, shall specify, inter alia, the precise portion of the record relied upon in support of the assertion of error.

* * * * *

29. In § 2.764, paragraphs (e), (f), and (g) are removed and paragraphs (a) and (b) are revised to read as follows:

§ 2.764 Immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

(a) Except as provided in paragraphs (c) and (d) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision relating to the issuance or amendment of a construction permit, a construction authorization, or an operating license shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon exceptions filed by any party pursuant to § 2.762 or upon its own motion.

(b) Except as provided in paragraphs (c) and (d) of this section, or as otherwise ordered by the Commission in special circumstances, the Executive Director for Operations, notwithstanding the filing of exceptions, shall issue a construction permit, a construction authorization, or an operating license, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

* * * * *

§ 2.785 [Removed]

30. Section 2.785 is removed.

§ 2.786 [Removed]

31. Section 2.786 is removed.

§ 2.787 [Removed]

32. Section 2.787 is removed.

§ 2.787 Composition of Atomic Safety and Licensing Appeal Boards.

[Removed]

33. In § 2.788, the section heading is revised, the introduction text of paragraph (b) is reprinted for the convenience of the reader, paragraph (b)(3) is removed, paragraph (b)(4) is redesignated paragraph (b)(3) and new (b)(3) is reprinted for the convenience of the reader, the introductory text to paragraph (e) is revised, and paragraphs (a), (c), (f), (g) and (h) are revised to read as follows:

§ 2.788 Stays of decisions of presiding officers pending review.

(a) Within ten (10) days after service of a decision or action any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on an appeal. An application for a stay may be filed with the Commission or the presiding officer.

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

* * * * *

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

(c) Service of an applicationf or a stay on the other parties shall be by the same method, e.g. telegram, mail, as the method for filing the application with the Commission or the presiding officer.

* * * * *

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

* * * * *

(f) An application for a stay of a decision or action of a presiding officer may be filed before either the Commission or the presiding officer, but not both at the same time.

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

(h) A party may file an application for a stay of a decision or action granting or denying a stay. As to a decision or action of a presiding officer, the application shall be filed with the Commission. In each case the procedures and criteria of (a)–(e) of this section shall be followed.

Appendix A [Removed]

34. Appendix A to Part 2 is removed.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 103, 104, 161, 182, 183, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2239); Secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246), unless otherwise noted. Section 50.78 also issued under Sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also

issued under Sec. 184, 68 Stat. 954 as amended; (42 U.S.C. 2234). Sections 50.100-50.102 issued under Sec. 186, 68 Stat. 955; (42 U.S.C. 2236). For the purposes of Sec. 223, 68 Stat. 958, as amended; (42 U.S.C. 2273). § 50.54(i) issued under Sec. 161i 68 Stat. 949; (42 U.S.C. 2201(i)). §§ 50.70, 50.71, 50.78 issued under Sec. 161o, 68 Stat. 950, as amended; (42 U.S.C. 2201(o)) and the Laws referred to in Appendices.

36. In § 50.10, paragraphs (e)(1) and (e)(3)(i) are revised to read as follows:

§ 50.10 License required.

* * * * *

(e)(1) The Executive Director for Operations may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.5(a) of this chapter, and is of the type specified in § 50.21(b)(2) or is a testing facility to conduct the following activities: (i) Preparation of the site for construction of the facility (including such activities as clearing, grading, construction of temporary access roads and borrow areas); (ii) installation of temporary construction support facilities (including such items as warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings); (iii) excavation for facility structures; (iv) construction of service facilities (including such facilities as roadways, paving, railroad spurs, fencing, exterior utility and lighting systems, transmission lines, and sanitary sewerage treatment facilities; and (v) the construction of structures, systems, and components which do not prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. No such authorization shall be granted unless the staff has completed a final environmental impact statement on the issuance of the construction permit as required by Part 51 of this chapter.

* * * * *

(3)(i) The Executive Director for Operations may authorize an applicant for a construction permit for a utilization facility which is subject to § 51.5(a) of this chapter, and is of the type specified in §§ 50.21(b) (2) and (3) or 50.22 or is a testing facility to conduct, in addition to the activities described in paragraph (e)(1) of this section, the installation of structual foundations, including any necessary subsurface preparation, for structures, systems and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.

* * * * *

The additional views of Chairman Palladino and Commissioner Bernthal and the separate views of Commissioners Gilinsky and Asselstine follow.

Dated at Washington, D.C. this 9th day of April, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Chairman Palladino's Additional Views

Because there could be some misunderstanding of my intent from a reading of Commissioner Asselstine's separate views, I have the following comments.

The matters on which the Commission seeks public comment are suggestions forwarded by the Regulatory Reform Task Force. It is my understanding that, while the Task Force has not voted on whether or not to support the eventual adoption of any or all of the proposals, the Task Force agrees that the proposals are a point of departure for discussion of hearing process reform.

While the suggestions forwarded by the Task Force have received review and comment by NRC groups, they have not been published for public comment; the public has not had the opportunity to agree or disagree with either those suggestions or Commissioner Asselstine's proposals.

I recognize that some of the suggestions may not be acceptable to some members of the public or to some members of the Commission, including myself. However, I do not believe that should be the criterion for deciding whether or not to request public comment. Given the conclusion that the suggestions are a point of departure for further discussion, I do not believe that it is inappropriate for the Commission to request public comment on them.

Additional Views of Commissioner Bernthal

It should be emphasized, as the summary statement indicates, that the ideas put forward by the Regulatory Reform Task Force (RRTF) do not and are not intended to have the imprimatur of the Commission. The fact that public comments are being solicited regarding these suggestions is *not* indicative of support by the Commission, or even by a majority of the Commission, for any given proposal. Indeed, neither the RRTF nor those who reviewed its work were able to arrive at a consensus on anything other than the appropriateness of further evaluation of the possible changes to the licensing process discussed in the Draft Report. The solicitation of public comment by the Commission should signify to the public only that the Commission seeks the broadest possible informational base prior to taking any further action regarding specific proposals discussed by the RRTF. In this case I believe this procedure is entirely appropriate in view of the extensive effort that has gone into developing these proposals, and the broad interest that attaches to them.

Separate Views of Commissioner Gilinsky (Parts 2 and 50)

I agree with Commissioner Asselstine's comments on the procedural proposals being put out by the Commission majority. I also agree with his proposed reform and urge that public comments concentrate on these as they are a far sounder starting point than the package of the Commission majority. I would add that I continue to believe that the staff should cease to be a full party seeking issuance of a license, and that the Commission should replace the Appeal Board as the direct reviewer of Licensing Board decisions.

Separate Views of Commissioner Asselstine

I disagree with the majority's decision to issue for public comment these proposals for procedural changes in the nuclear power plant licensing process. These proposals, which were presented to the Commission in a November, 1982 draft report from the Chairman's Regulatory Reform Task Force (RRTF), reflect the most extreme view of licensing "reform" and, if adopted, would as a practical matter effectively eliminate public participation in the hearing process. Moreover, the process by which these proposals were developed does not support the majority's decision to proceed to issue them for comment in their present form.

As the Commission's notice makes clear, these proposals, and the accompanying explanatory discussion in the November, 1982 draft report, do not represent the views and recommendations of the Regulatory Reform Task Force. Rather, these proposals constitute nothing more than a collection of possible changes to our hearing procedures for discussion purposes. In such circumstances, the Commission should first decide which changes to its licensing procedures it believes are appropriate and beneficial, and then seek public comment on those changes. Further, any public notice of possible changes to our hearing procedures should present a full, fair and even-handed discussion of the potential advantages and disadvantages

of each proposed change. The document being issued for comment by the majority today fails to meet this test. Such proposals, and the process by which they were developed, do not provide a basis for Commission development of a set of reasonable and constructive changes to the hearing process—changes that I believe are needed to improve the efficiency and effectiveness of the process and to enhance the opportunities for participation by all involved parties, including public intervenors, the utility applicants and the NRC staff.

The following proposals being issued by the majority for comment are of particular concern: the proposal to establish a higher evidentiary threshold for the admission of contentions; the proposal to require that contentions be filed at the time the request for hearing or petition for leave to intervene is filed; the proposal to limit the opportunity to amend or file contentions after the relevant staff review documents become available; the proposal to establish a single Screening Board with exclusive authority to rule on the admissibility of contentions and Licensing Board requests to pursue issues *sua sponte;* the proposal to restrict opportunities for cross-examination; the proposal to eliminate the Commission's immediate effectiveness reviews of initial licensing decisions; the proposal to eliminate the Atomic Safety and Licensing Appeal Boards; and the proposal to require the codification of all generic factual issues that are considered in individual licensing decisions.

Each of these proposals suffers from significant legal, policy or administrative disadvantages that are not readily apparent from the discussion in the document being issued by the majority. For example, the proposals for the filing of detailed support for contentions prior to any opportunity for discovery, together with the added restrictions on late-filed contentions, would impose an unfair and probably illegal burden on public intervenors. The proposal for a Screening Board would detract from the orderly continuing management of the hearing process by the Licensing Board and would remove the responsibility to rule on contentions from those best able to carry out that responsibility. The proposal to restrict opportunities for cross-examination would impose an unfair burden on public participants and would represent an improper attempt to eliminate present legal requirements for trial-type adjudicatory hearings. The proposal to eliminate Commission immediate effectiveness reviews would eliminate the only requirement for direct Commission review prior to the commencement of operation of a new plant. The proposal to eliminate the Appeal Boards would deprive the Commission of the benefits of the thorough, expert and independent reviews of Licensing Board initial decisions now provided by the Appeal Boards. The proposal to require the codification of all generic factual issues considered in an individual licensing proceeding would commit the Commission to codification even where there are no benefits to be gained by such action.

These proposals were strongly criticized by individual members of the Regulatory Reform Task Force and by members of the Senior Advisory Group, a group of senior NRC officials with extensive knowledge of, and experience with, the hearing process. In addition, the Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals, a group of knowledgeable experts from outside the agency with diverse perspectives on regulatory reform issues, recommended against adoption of all but one of these proposals. Moreover, the Commission's two legal offices, either in comments on the proposals, or in previous regulatory reform evaluations, have questioned the Commission's legal authority to adopt several of these proposals.

Notwithstanding the serious legal and public policy concerns that have been raised repeatedly by members of the Task Force, the Senior Advisory Group, the Ad Hoc Committee, the Commission's legal offices and others, the draft report being issued by the Commission today paints these proposals only in the most favorable light. The discussion of the majority of the proposals is biased in favor of the proposal and fails even to mention, much less address, the countervailing legal and public policy considerations.

Despite repeated suggestions from knowledgeable individuals from within and outside the agency, the Commission has made little progress over the past two years in developing reasonable improvement in our hearing procedures. That lack of progress is directly attributable to the dogged pursuit of more radical and extreme proposals for restructuring the hearing process. Rather than continuing on this course, the Commission should: (1) Reject decisively the extreme and unwarranted proposals in this notice; (2) restructure the Task Force to assure that it will function as a source of objective advice to the Commission on the subject of regulatory reform; and (3) proceed immediately to develop appropriate rule changes and policy guidance that would result in improvements in the efficiency and effectiveness of the hearing process and in the opportunities for participation by all involved parties.

In the hope of encouraging a more sensible and constructive direction in our regulatory reform effort, I am including in these views my own suggestions for improving the hearing process. These suggestions are drawn largely from the comments and recommendations of individual members of the Regulatory Reform Task Force, the Senior Advisory Group, the Ad Hoc Committee for Review of Nuclear Reactor Licensing Reform Proposals, and from previous NRC licensing reform efforts. I would appreciate comments on whetner these suggestions provide a reasonable basis for Commission development of a set of useful and appropriate changes to our hearing procedures.

In brief, I woud revise the present hearing procedures to provide for the following:

- A notice of the submission of each reactor license application. Following this notice, interested persons could notify the Commission of their interest. Such persons would then be notified of meetings between the NRC staff and the applicant, and the staff would hold periodic meetings with such interested persons to here and respond to their concerns regarding the application. A local public document room would also be established following the notice.
- A notice of opportunity for hearing would be issued following the staff's docketing review, as under present practice. The notice would require interested persons to file intervention petitions within one month. However, the only question to be considered by the Licensing Board in deciding on the petition is whether the person has standing to intervene. No contentions need be filed at this stage.
- Intervenors admitted as parties to the proceeding would be given three months after they are admitted to review available documents and to prepare contentions. Contentions filed at the end of the three-month period would be reviewed by the Licensing Board and admitted provisionally: (1) If the contention meets present Commission requirements for admissibility; (2) if it is accompanied by a statement of all significant facts known to the intervenor at that time supporting each contention, together with references to the specific sources and documents which have been or will be relied on to establish such facts; and,

(3) unless the Board determines that it appears beyond doubt that the intervenor can prove no set of facts in support of its claim which would entitle it to relief. The third part of this test is modeled after the test established by the Supreme Court in *Conley* v. *Gibson*, 355 U.S. 41 (1957) for federal courts in determining whether a motion to dismiss a complaint should be granted pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure. In applying this part of the test, the Licensing Board would consider whether, reviewing the contention in the light most favorable to its proponent and whether every doubt resolved in the proponent's behalf, the contention states any valid claim for relief. Legal issues would be admitted and considered based upon oral argument rather than upon an adjudicatory hearing.

• A period of 4–6 months would be provided for discovery on all provisionally admitted contentions. Extensions could be granted only for good cause. The Licensing Boards would be directed by the Commission as a matter of policy to supervise closely the discovery process and to use such measures as bi-weekly telephone conference calls to manage the discovery process.

• At the close of the discovery period, the Licensing Board would rule on whether to proceed with a hearing on factual contentions. At this stage, the Board would only proceed to conduct an adjudicatory hearing on those contentions for which an intervenor has established that a genuine issue of material fact exists. In making this determination, the Board would apply the test set forth by the Court in *Independent Bankers Ass'n.* v. *Board of Governors*, 516 F.2d 1206, 1220 n. 57 (D.C. Cir. 1975). Under this test, an intervenor need not make detailed factual allegations in order to meet the requirement that he or she raise "issues of material fact." Rather, the intervenor need only show that an "inquiry in depth" is appropriate.

• Late-filed contentions would be admitted as under the Commission's present rules. If the contention could not have been filed earlier due to the institutional unavailability (i.e., the unavailability of staff documents or emergency plans) of the information on which the contention is based, the intervenor will be presumed to have met the good cause factor in § 2.714. As a policy matter, the staff would be directed to pursue the goal of early availability of all staff documents, preferably within six months of the issuance of the notice of opportunity for hearing.

• The Licensing Boards would be granted the authority to call experts as board witnesses. As a matter of policy, the Commission would provide that parties to a proceeding could file requests with the Board to call expert witnesses on issues to be litigated in the proceeding.

• As a matter of policy, the Licensing Boards would be directed to require the preparation and use of cross-examination plans for extended cross-examination of witnesses in the hearing.

• As a matter of Commission policy, the Licensing Boards and parties to a licensing proceeding, including the NRC Staff, would be invited to recommend to the Commission generic issues considered in individual licensing proceedings which could be usefully codified.

• Hybrid hearing procedures similar to those specified in section 134 of the Nuclear Waste Policy Act of 1982 would be used on an experimental basis in a few selected cases. All parties to the proceeding would have to agree to the use of hybrid hearing procedures.

The majority of my suggestions could be adopted through the issuance of a revised Commission policy statement on the conduct of nuclear power plant licensing hearings and through some limited revisions to 10 CFR Parts 2 and 50. If adopted, I believe that changes to our hearing procedures along the lines suggested would help assure a more efficient and effective hearing process as well as one that is fair to all participants. I invite comments on this approach and would welcome the opportunity to discuss my suggestions with interested persons.

[FR Doc. 84-9566 Filed 4-11-84; 8:45 am]
BILLING CODE 7590-01-M