



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ATOMIC SAFETY AND LICENSING APPEAL PANEL  
WASHINGTON, D.C. 20555

DOCKET NUMBER  
PROD. & UTIL. FAC. 50-471

February 23, 1981

ALL PARTIES IN PILGRIM

The Appeal Board has asked me to draw your attention to the limit of 70 pages on appellate briefs now formally set by the Commissions Rules of Practice 10 CFR §2.762. A copy of amended section 2.762 is enclosed.



Very truly yours,

*C. Jean Bishop*

C. Jean Bishop  
Secretary to the  
Appeal Board

Enclosure

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lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons has improved somewhat over last week.

It is further found that there is insufficient time between the date when information became available upon which this regulation is based and when the action must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553). It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.592 is added as follows:

**§ 910.592 Lemon Regulation 252.**

(a) The quantity of lemons grown in California and Arizona which may be handled during the period February 15, 1981, through February 21, 1981, is established at 195,000 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: February 11, 1981.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

#### Rules of Practice for Domestic Licensing Proceedings; Administrative Appellate Briefs

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding a new subsection to its rules of practice to limit the length of administrative appellate briefs to 70 pages.

**EFFECTIVE DATE:** March 16, 1981.

**FOR FURTHER INFORMATION CONTACT:** Alan S. Rosenthal, Chairman, Atomic Safety and Licensing Appeal Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301-492-7652.

**SUPPLEMENTARY INFORMATION:** The Commission's Rules of Practice do not now impose a limitation on the length of briefs filed on appeals from initial decisions. Section IX(d)(2) of Appendix A to those Rules (10 CFR Part 2) acknowledges that fact but then goes on to state that "in most cases the issues raised by the exceptions should be susceptible of full treatment in a brief which does not exceed 70 pages." That guidance had generally followed the rule applied in courts of appeals. In this connection, Rule 28(g) of the Federal Rules of Appellate Procedure now provides that "[e]xcept by permission of the court, or as specified by local rule of the court of appeals, principal briefs shall not exceed 50 pages \* \* \* exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc." Until amendment in 1978, that rule provided a 70-page limit and at least one court, the District of Columbia Circuit, has seen fit to increase the limitation to 70 pages. See D.C. Circuit Local Rule 8(g).

Over the years, the Appendix A guideline has frequently been ignored. As a consequence, in September 1978, the Appeal Board put the Bar "on notice" \* \* \* that, unless there is a greater general effort to adhere to the Section IX(d)(2) guideline, it likely will be considered necessary to convert that guideline into a limitation. *Public Service Co. of Oklahoma* (Black Fox Station, Units 1 and 2), ALAB-498, 8 NRC 315, 316 (1978). Despite this admonition, the Board still receives excessively long briefs from time to time.

In these circumstances, the Commission has accepted the Appeal Panel's recommendation to convert the Section IX(d)(2) "guidance" into a limitation akin to that enforced by the District of Columbia Circuit. This would not absolutely preclude, of course, briefs in excess of 70 pages. What it would mean is that, before filing such a brief, the litigant would be required to seek the Appeal Board's permission. In granting that permission where there appeared to be sufficient cause to do so, the Appeal Board would be free to set a specific new page limitation. For example, although the litigant might seek to file a 130-page brief, the Appeal Board might decide to allow a brief of 90 pages.

Section 2.762 will be amended to add a new subsection (c) containing the page limitation on appellate briefs. The existing subsection (e) will be redesignated subsection (f), Part 2.

Appendix A, section IX(d)(2) will be modified to conform to this amendment.

Because this amendment relates solely to matters of agency procedure, notice of proposed rulemaking and public procedure thereon are not required by section 553 of Title 5 of the United States Code and shall be omitted from this proceeding. These final rules will become effective for all appellate briefs filed thirty days after publication in the Federal Register.

Accordingly, 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, the following amendment to Title 10, Chapter I, Code of Federal Regulations, Part 2, is published as a document subject to codification:

1. Section 2.762 is amended by redesignating paragraph (e) as (f) and adding a new paragraph (e) as follows:

**§ 2.762 Appeals to the Commission from initial decisions.**

(e) Briefs shall not exceed seventy (70) pages in length, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc. A party may request for good cause an enlargement of this page limitation. Such a request shall be made by motion submitted at least seven (7) days before the date upon which the brief is due for filing and shall specify the enlargement required.

2. Part 2, Appendix A, section IX(d)(2) is amended by revising the sixth sentence to read as follows:

IX. Licensing Proceedings Subject to Appellate Jurisdiction of Atomic Safety and Licensing Appeal Board.

(d)(1) \* \* \*  
(2) \* \* \* No brief is to exceed 70 pages in length unless leave to file a brief of a specified greater length has been previously sought and granted (10 CFR 2.762(e)). \* \* \*  
(Sec. 161(p), Pub. L. No. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. No. 93-438, 88 Stat. 1243 (42 U.S.C. 5841))

Dated at Washington, D.C., this 6th day of February 1981.

For the Commission,  
Samuel J. Chilk,  
Secretary of the Commission.  
[FR Doc. 81-5316 Filed 2-12-81; 8:43 am]  
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