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OF ELIGIBILITY TO PARTICIPATE

CASE REFERENCE: PR-002
64FR29212

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DOCKET NO. PR-002
(64FR29212)

In the Matter of
FORMAL AND INFORMAL ADJUDICATORY HEARING
PROCEDURES; CLARIFICATION OF ELIGIBILITY TO
PARTICIPATE

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
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05/25/99

05/24/99

FEDERAL REGISTER NOTICE - DIRECT FINAL RULE

DOCKET NUMBER
PROPOSED RULE **PR 2**
(64FR29212)

DOCKETED
USHRC

[7590-01-P]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

OFF-
RULE
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STAFF

RIN: 3150-AG27

FORMAL AND INFORMAL ADJUDICATORY HEARING PROCEDURES;
CLARIFICATION OF ELIGIBILITY TO PARTICIPATE

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing participation in adjudicatory proceedings conducted under its Rules of Practice to clarify that Federally-recognized Indian tribal governments are entitled to participate in these proceedings on the same basis as other governmental units.

EFFECTIVE DATE: The final rule is effective ~~[sixty days from the date of this notice]~~, unless *August 2, 1999*
July 1, 1999 significant adverse comments are received by ~~[thirty days from the date of this notice]~~. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Mail any comments to: Secretary, U.S. Nuclear Regulatory Commission,
Washington, D.C. 20555, Attention: Rulemakings and Adjudications Staff.

Pub. on 6/1/99

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 am and 4:15 Eastern time on Federal workdays.

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

Copies of any comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Charles E. Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001; telephone (301) 415-1606; e-mail: CEM@nrc.gov.

SUPPLEMENTARY INFORMATION:

Because the NRC considers this action noncontroversial and routine, the NRC is publishing the rule in final form without first seeking public comments on the amendments in a proposed rule. This action will become effective on [60 days from the date of this publication]. However, if the NRC receives significant adverse comments by [30 days from the date of this Notice], the NRC will publish a notice that withdraws this action pending review of the comments, and will address those comments in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Background

These amendments are intended to ensure that Federally-recognized Indian Tribal governments and their official subdivisions have the same participation rights in NRC adjudicatory proceedings as State governments, units of local governments, and their official subdivisions. In many respects, Federally-recognized Indian tribes exercise inherent sovereign powers over their members and territory, similar to the powers exercised by States and other units of local government. In many areas of the law, these sovereign rights are recognized either by court decision, statute, or treaty. Therefore, because these tribes exercise many of the attributes of States or other governmental units, the Commission has determined that they should be recognized in adjudicatory proceedings in the same fashion as State and local governmental bodies. Accordingly, the Commission is issuing this amendment to ensure that Federally-recognized Indian tribes will have the same opportunity to participate in any proceeding that affects their interests. These amendments are intended to meet the goals of Executive Order No. 13084 of May 14, 1998.

In addition, the Commission is also making two minor editorial changes in §2.1211(b) to conform its wording to the wording in §2.715(c).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, non-substantive amendment; it has no economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rulemaking is an administrative action that clarifies the rights of Federally-recognized Indian tribes to participate in NRC adjudicatory proceedings. It has no financial impact on NRC licensees or the public.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not impose any provisions that would impose backfits as defined in 10 CFR 50.109.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

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, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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

Authority: secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114 (f); Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10143 (f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42

U.S.C. 5846). Sections 2.205 (j) also issued under Pub. L. 101-410, 104 Stat. 90, as amended by section 3100 (s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C.2461 note). Section 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135).

2. 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, Federally-recognized Indian Tribe, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, 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.

* * * * *

3. In §2.1211, paragraph (b) is revised to read as follows:

§2.1211 Participation by a person not a party.

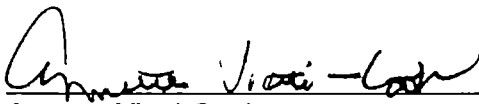
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(b) Within 30 days of an order granting a request for a hearing under §2.1205 (b)-(d) or, in instances when it is published, within 30 days of notice of hearing issued under §2.1205(j), the representative of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, may request an opportunity to participate in a proceeding under this subpart. The request for an opportunity to participate must state with reasonable specificity the requester's area of concern about the licensing activity that is the subject matter of the proceeding. Upon receipt of a request that is filed in accordance with these time limits and that specifies the requester's areas of concern, the presiding officer shall afford the requester a reasonable opportunity to make written and oral presentations in accordance with §§2.1233 and 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this subsection may notice an appeal of an initial decision in accordance with §2.1253 with respect to any issue on which they participate.

Dated at Rockville, Maryland, this 24th day of May, 1999.

For the Nuclear Regulatory Commission.


Annette Vietti-Cook,
Secretary of the Commission.