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**TITLE: PR-002,050,115 - 30FR14014 - REVIEW OF INITIAL
DECISION**

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TITLE 10 - ATOMIC ENERGY

CHAPTER 1 - ATOMIC ENERGY COMMISSION

PART 2 - RULES OF PRACTICE

PART 50 - LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

PART 115 - PROCEDURES FOR REVIEW OF CERTAIN NUCLEAR REACTORS

EXEMPTED FROM LICENSING REQUIREMENTS

Review of Initial Decision

On November 5, 1965, the Atomic Energy Commission published in the FEDERAL REGISTER (30 F.R. 14014) proposed amendments to its regulations which would eliminate, in licensing and compliance proceedings, the procedure for Commission review of initial decisions by the filing of petitions for review, whose granting is discretionary, and substitute appeals as of right by the filing of exceptions by the parties.

All interested persons were invited to submit written comments and suggestions for consideration in connection with the proposed amendments within 60 days after publication of the notice of proposed rule making in the FEDERAL REGISTER. Upon consideration of the material submitted in response to the notice of proposed rule making and other factors involved, the

Commission has decided to adopt the amendments set forth below, which, except as noted, are the same as those set out in the notice of proposed rule making.

The amendments to 10 CFR Part 2, "Rules of Practice," permit appeals as of right from initial decisions by the filing of exceptions. Amendments are also made to related sections of Part 50, "Licensing of Production and Utilization Facilities," and Part 115, "Procedure for Review of Certain Nuclear Reactors Exempted from Licensing Requirements," to reflect the changes in Part 2. The amendments do not affect the Commission's opportunity to review initial decisions within forty-five days on its own motion. The principal purpose of the amendments is not to encourage the taking of appeals from initial decisions, but rather to expedite the Commission's decisional process by the elimination of procedural requirements - the petition for review and Commission ruling on the petition - which have not proved necessary.

The amendments to Part 2, as proposed in the notice of proposed rule making, specified (§ 2.762) that exceptions might be filed within twenty days after service of the initial decision and a party might file a brief in support of his

exceptions, or in opposition to the exceptions filed by another party, within such period after service of the initial decision as might be fixed therein. The amendment of § 2.762 set forth below provides that both exceptions and the supporting brief of the excepting party shall be filed within twenty days after service of the initial decision. Briefs in opposition to exceptions or in support of exceptions filed by another party may be filed within ten days after the service of exceptions. It is expected that a general requirement for exceptions and supporting briefs to be filed together, by a specified day, and for answering briefs also to be filed by a specified day, will serve to expedite and shorten the Commission's adjudicatory process. If in any case good cause can be shown for extending the specified period, the Commission may, under § 2.711 of Part 2, grant such extensions.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Parts 2, 50 and 115, are published as a document subject to codification, to be effective thirty (30) days after publication in the FEDERAL REGISTER.

1. Paragraph (i) of § 2.743 is revised to read as follows:

§ 2.743 Evidence.

* * * *

(i) Official notice. Official notice may be taken of any fact of which judicial notice might be taken by the courts of the United States and of any technical or scientific fact within the knowledge of the Commission as an expert body, if (1) the fact is specified in the record or is brought to the attention of the parties before final decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact. Any party may oppose a request that official notice be taken of a fact. If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, the party may controvert the fact by exceptions to an initial decision or a petition for reconsideration of a final decision, clearly and concisely setting forth the information relied on to show the contrary.

2. Paragraph (a) and subparagraphs (3) and (4) of paragraph (c) of § 2.760 are revised to read as follows:

§ 2.760 Initial decision and its effect.

(a) After hearing, the presiding officer will render an initial decision which will constitute the final action of the Commission forty-five (45) days after its date when it authorizes the issuance or amendment of a license for a facility, or thirty days after its date in any other case, unless exceptions are taken in accordance with § 2.762 or the Commission directs that the record be certified to it for final decision.

* * * *

(c) * * *

- (3) The appropriate ruling, order or denial of relief with the effective date;
- (4) The time within which exceptions to the decision and a brief in support of them may be filed, the time within which briefs in support of or in opposition to exceptions filed by another party may be filed and, in the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

3. Subparagraph (1) of § 2.761 (a) and subparagraph (1) of § 2.761 (c) are revised to read as follows:

§ 2.761 Expedited decisional procedure.

(a) * * *

(1) All parties stipulate that the initial decision may be omitted and waive their rights to file exceptions, to request oral argument, and to seek judicial review;

* * * *

(c) * * *

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to file exceptions, to request oral argument, and to seek judicial review.

* * * *

4. Section 2.762 is revised to read as follows:

§ 2.762 Exceptions to initial decisions and briefs to the Commission.

(a) Within twenty (20) days after service of any initial decision, any party may file exceptions to the decision and a brief in support of them

with the Commission and shall serve copies of such exceptions and brief on all other parties. Each exception shall be separately numbered, shall identify the part of the initial decision to which objection is made; shall specify precisely the portions of the record relied upon; and shall state the grounds for the exception including the citation of authorities in support thereof. Any objection to a ruling, finding, or conclusion which is not made a part of the exceptions will be deemed to be waived.

(b) Any party to a proceeding may file a brief in support of or in opposition to exceptions filed by any other party within ten (10) days after the service of exceptions.

5. Section 2.763 is revised to read as follows:

§ 2.763 Oral argument.

In its discretion the Commission may allow oral argument upon the request of a party made in his exceptions or brief, or upon its own initiative.

6. Paragraph (b) of § 2.764 is revised to read as follows:

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

* * * *

(b) If any party opposes the motion for expedited effectiveness of the initial decision, the presiding officer may stay its effectiveness pending the filing, within five (5) days after its issuance, of an exception to the provision for expedited effectiveness, and thereafter until decision by the Commission on the exception.

7. Paragraph (a) of § 2.771 is revised to read as follows:

§ 2.771 Petition for reconsideration.

(a) A petition for reconsideration of a final decision may be filed by a party within ten (10) days after the date of the decision. No petition may be filed with respect to an initial decision which has become final through failure to file exceptions thereto.

8. Paragraph (e) of § 50.57 is revised to read as follows:

§ 50.57 Provisional operating license.

* * * *

(e) In a case where a hearing has been held in connection with a proceeding under this section the presiding officer may, upon written motion and upon good cause shown, provide that any initial decision issued pursuant to this section shall become effective ten (10) days after issuance subject to (1) the review thereof and further decision by the Commission upon exceptions filed by any party, and (2) such order as the Commission may enter upon such exceptions or upon its own motion within forty-five (45) days after the issuance of such initial decision. In the absence of a Commission order pursuant to the foregoing, and in the absence of exceptions to the initial decision, the initial decision shall become the final decision of the Commission at the end of such forty-five (45) day period. If any

party opposes the motion for expedited effectiveness of the initial decision, the presiding officer may stay its effectiveness pending filing within five (5) days after its issuance of an exception to the provision for expedited effectiveness, and thereafter until decision by the Commission on the exception.

9. Paragraph (e) of § 115.45 is revised to read as follows:

§ 115.45 Provisional operating authorization.

* * * *

(e) In a case where a hearing has been held in connection with a proceeding under this section the presiding officer may, upon written motion and upon good cause shown, provide that any initial decision issued pursuant to this section shall become effective ten (10) days after issuance subject to (1) the review thereof and further decision by the Commission upon exceptions filed by any party, and (2) such order as the Commission

may enter upon such exceptions, or upon its own motion within forty-five (45) days after the issuance of such initial decision. In the absence of a Commission order pursuant to the foregoing, and in the absence of exceptions to the initial decision, the initial decision shall become the final decision of the Commission at the end of such forty-five (45) day period. If any party opposes the motion for expedited effectiveness of the initial decision, the presiding officer may stay its effectiveness pending filing within five (5) days after its issuance of an exception to the provision for expedited effectiveness, and thereafter until decision by the Commission on the exception.

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

Dated at Washington, D. C., this 3rd day of March , 1966.

FOR THE ATOMIC ENERGY COMMISSION



W. B. McCool
Secretary

ATOMIC ENERGY COMMISSION

(10 CFR PARTS 2, 50, AND 115)

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

Review of Initial Decision

The Commission has under consideration amendments to its Rules of Practice, Part 2, which would eliminate the present procedure for petitions for review of initial decisions in licensing and compliance proceedings and substitute appeals as of right by the filing of exceptions by the parties, and amendments to related sections of Part 50, "Licensing of Production and Utilization Facilities"; and Part 115, "Procedures for Review of Certain Nuclear Reactors Exempted from Licensing Requirements." Those sections presently prescribe, or refer to, a procedure whereby Commission review of initial decisions may be had only by the filing of a petition for review which the Commission in its discretion may or may not grant.

Experience under that procedure indicates that the use of the petition for review delays, rather than expedites, the disposition of cases, by adding additional steps to the adjudicatory process. It has not, on the other hand, lessened the workload of either the Commission or the staff. Accordingly, the Commission is considering adoption of the less cumbersome procedure of allowing appeals from initial decisions by

the filing of exceptions. These amendments would not affect the Commission's opportunity to review initial decisions within forty-five days on its own motion. The Commission's principal purpose here is not to encourage the taking of appeals from initial decisions, but rather to expedite the Commission's decisional process by the elimination of procedural requirements which have not proved necessary.

Pursuant to the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act of 1946, notice is hereby given that adoption of the following amendments of 10 CFR Parts 2, 50 and 115 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary, United States Atomic Energy Commission, Washington, D. C., 20545, within sixty days after publication of this notice in the FEDERAL REGISTER. Comments received after that period will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments filed within the period specified.

1. Paragraph (i) of § 2.743 is revised to read as follows:

§ 2.743. Evidence.

* * * *

(i) Official notice. Official notice may be taken of any fact of which judicial notice might be taken by the courts of the United States and of any technical or scientific fact within the knowledge of the Commission as an expert body, if (1) the fact

is specified in the record or is brought to the attention of the parties before final decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact. Any party may oppose a request that official notice be taken of a fact. If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by exceptions to an initial decision or a petition for reconsideration of a final decision, clearly and concisely setting forth the information relied on to show the contrary.

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* * * * *

(c) * * *

(3) The appropriate ruling, order or denial of relief with the effective date;

(4) The time within which exceptions to the decision may be filed, the time within which briefs in support of or in opposition to the exceptions may be filed and, in the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

3. Subparagraph (1) of § 2.761 (a) and subparagraph (1) of § 2.761 (c) are revised to read as follows:

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(c) * * *

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to file exceptions, to request oral argument, and to seek judicial review.

* * * * *

4. § 2.762 is revised to read as follows:

§ 2.762 Exceptions to initial decisions and briefs to the Commission.

(a) Within 20 days after service of any initial decision, or such longer period as may be fixed therein, any party may file exceptions to the decision with the Commission and shall serve copies of such exceptions on all other parties. Each exception shall be separately numbered, shall identify the part of the initial decision to which objection is made; shall specify precisely the portions of the record relied upon; and shall state the grounds for the exception including the citation of authorities in support thereof. Any objection to a ruling, finding, or conclusion which is not made a part of the exceptions will be deemed to be waived.

(b) Within such period after service of an initial decision as may be fixed therein, any party to a proceeding may file a brief before the Commission in support of his exceptions to the decision or in opposition to the exceptions filed by any other party.

5. § 2.763 is revised to read as follows:

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6. Paragraph (b) of § 2.764 is revised to read as follows:

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

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(b) If any party opposes the motion for expedited effectiveness of the initial decision, the presiding officer may stay its effectiveness pending the filing, within five (5) days after its issuance, of an exception to the provision for expedited effectiveness, and thereafter until decision by the Commission on the exception.

7. Paragraph (a) of § 2.771 is revised to read as follows:

§ 2.771 Petition for reconsideration.

(a) A petition for reconsideration of a final decision may be filed by a party within ten (10) days after the date of the decision. No petition may be filed with respect to an initial decision which has become final through failure to file exceptions thereto.

8. Paragraph (e) of § 50.57 is revised to read as follows:

§ 50.57 Provisional operating license.

* * * * *

(e) In a case where a hearing has been held in connection with a proceeding under this section the presiding officer may, upon written motion and upon good cause shown, provide that any initial decision issued pursuant to this section shall become effective ten (10) days after issuance subject to (1) the review thereof and further decision by the Commission upon exceptions filed by any party, and (2) such

order as the Commission may enter upon such exceptions or upon its own motion within forty-five (45) days after the issuance of such initial decision. In the absence of a Commission order pursuant to the foregoing, and in the absence of exceptions to the initial decision, the initial decision shall become the final decision of the Commission at the end of such forty-five (45) day period. If any party opposes the motion for expedited effectiveness of the initial decision, the presiding officer may stay its effectiveness pending filing within five (5) days after its issuance of an exception to the provision for expedited effectiveness, and thereafter until decision by the Commission on the exception.

9. Paragraph (e) of § 115.45 is revised to read as follows:

§ 115.45 Provisional operating authorization.

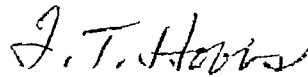
(e) In a case where a hearing has been held in connection with a proceeding under this section the presiding officer may, upon written motion and upon good cause shown, provide that any initial decision issued pursuant to this section shall become effective ten (10) days after issuance subject to (1) the review thereof and further decision by the Commission upon exceptions filed by any party, and (2) such order as the Commission may enter upon such exceptions, or upon its own motion within forty-five (45) days after the issuance of such initial decision. In the absence of a Commission order pursuant to the foregoing, and in the absence of exceptions to the initial decision,

the initial decision shall become the final decision of the Commission at the end of such forty-five (45) day period. If any party opposes the motion for expedited effectiveness of the initial decision, the presiding officer may stay its effectiveness pending filing within five (5) days after its issuance of an exception to the provision for expedited effectiveness, and thereafter until decision by the Commission on the exception.

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

Dated at Washington, D. C., this 28th day of October, 1965.

FOR THE ATOMIC ENERGY COMMISSION



F. T. Hobbs
Assistant Secretary

DOCKET NUMBER **PR 2,50**
PROPOSED RULE

+115

Review of Initial Decision

LAW OFFICES OF

LEBOEUF, LAMB & LEIBY
1821 JEFFERSON PLACE, N.W.
WASHINGTON, D.C. 20036

ARVIN E. UPTON
EUGENE B. THOMAS, JR.
WASHINGTON PARTNERS

January 4, 1966

ONE CHASE MANHATTAN PLAZA
NEW YORK, N.Y. 10005

WASHINGTON TELEPHONE:
202 FEDERAL 8-0111



Mr. W. B. McCool
Secretary
United States Atomic
Energy Commission
Washington 25, D. C.

Dear Sir:

This letter is written with reference to the notice issued in the Federal Register (30 F.R. 14014) on November 5, 1965, stating that the Atomic Energy Commission was considering certain amendments of procedures for review of initial decisions and inviting comment thereon.

The proposed elimination of "double filing" is clearly worthwhile in the interest of streamlining procedures. However, the requirement that the time for filing of briefs be specified in each case by the decision itself could lead to delay which might not otherwise occur. In this connection, your attention is invited to the rule followed by the Federal Power Commission which has given the Secretary of that Commission discretion to alter the periods for filing of briefs.

There would seem to be no reason to order that the exceptions and supporting brief be filed at different times. A better practice might be to require simultaneous filing of the exceptions and the supporting brief and to allow a reasonable, fixed additional time for the filing of the answering brief.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Arvin E. Upton".

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Acknowledged 1/5/66, ora