

MARCH 11, 1999

SECY-99-075

FOR: The Commissioners
FROM: Annette L. Vietti-Cook /s/
Secretary of the Commission

SUBJECT: PROPOSED MINOR AMENDMENTS TO 10 CFR PART 2

PURPOSE:

The purpose of this Commission paper is to inform the Commission of two rulemakings that make minor amendments to the NRC's Rules of Practice in 10 CFR Part 2 and to seek the Commission's approval through negative consent.

BACKGROUND:

Under NRC Manual Chapter 0105, the Secretary has authority to

[t]ake action ... on minor or corrective amendments to final rules modifying Parts 0,2,8, 9 (Subpart C), and 110 that do not involve questions of policy. Such amendments shall be effected only after the Secretary informs the Commission of the proposed changes, and the Commission has been given a reasonable opportunity to provide its views to the Secretary through the negative consent process.

NRC-0105-036(c). In accordance with that directive, the Office of the General Counsel ("OGC") has prepared two rulemakings that make minor, non-policy-related amendments to the Commission's Rules of Practice in 10 CFR Part 2.

DISCUSSION:

The first rulemaking changes the method of making service of Requests for Hearings and Petitions for Leave to Intervene in "informal" adjudications conducted under 10 CFR Part 2, Subpart L on the NRC Staff. Currently, service on the Staff is accomplished by serving the documents on the Executive Director for Operations ("EDO"), either by hand delivery or by mail. But serving the EDO can result in unnecessary delays in the Staff's legal representatives preparing responses to these pleadings. The new rule will require service directly on the Office

CONTACT:
Charles E. Mullins, OGC
(301) 415-1606

of the General Counsel in the first instance, removing any delay caused by serving the EDO and having the EDO relay the document to OGC. In addition, this rulemaking corrects two minor errors in a previous rulemaking that were not detected when the previous final rule was issued. OGC has advised that these changes can be made immediately effective. An appropriate Federal Register Notice has been prepared and is provided for your consideration as Attachment 1.

The second rulemaking amends the Commission's Rules of Practice to allow Federally-recognized Indian tribes to participate in both formal and informal adjudications under Subparts G and L on the same basis as States or other local governmental units without actually seeking formal intervention. This change was approved, at least in principle, by the Commission in approving the issuance of Part 2, Subpart J, governing the procedures for issuance of licenses for a Geologic Repository. During that rulemaking, several Indian tribes commented that the NRC should amend its rules to allow Federally-recognized Indian tribes to participate in proceedings on the same basis as States and other units of local governments. The Commission declined that request as outside the scope of the proposed rule in Subpart J, but announced that "the NRC intends to undertake a separate rulemaking to amend [its Rules of Practice] to include federally recognized Native American tribal governments." Statement of Considerations, 63 Fed. Reg. 71729, 71733 (Dec. 30, 1998). See also Staff Requirements Memorandum (SRM) SECY-98-237 (November 24, 1998) at 1.

Based on the advice of OGC, this second rulemaking has been prepared as a direct final rule. This procedure does not require the prior issuance of a separate proposed rule; instead, the rule will be issued as taking effect in sixty (60) days but allowing thirty (30) days for public comment through a companion proposed rule that is published concurrently with the direct final rule. If there are significant negative comments during that period, the Commission will retract the rule, treat it as a proposed rule, and subsequently issue a final rule that takes those comments into account. Appropriate Federal Register Notices have been prepared and are provided for your consideration as Attachment 2.

RESOURCES:

Because the first rulemaking will be issued as immediately effective and because we do not anticipate any negative comments in response to the second Federal Register Notice, no significant agency resources are expected to be required for this rulemaking.

COORDINATION:

The Office of the General Counsel has no legal objection. The Chief Information Officer and the Executive Director for Operations concur in this paper. The Chief Financial Officer has reviewed this paper for resource implications and has no objections.

RECOMMENDATION:

That the Commission note that, unless otherwise directed within 10 working days, it is my intention to forward the two attached draft Notices to the Federal Register for publication. In view of the comments in the Statement of Considerations and the SRM, OGC considers that this Rulemaking does not involve a question of "policy" as intended in Manual Chapter 01-05-

The Commissioners

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036(c). Accordingly, we consider this matter to be within the delegated authority of the Secretary.

Annette L. Vietti-Cook
Secretary of the Commission

- Attachments:
1. Draft Federal Register Notice for Immediately Effective Amendments to Part 2, Subpart L.
 2. Draft Federal Register Notices for Direct Final Rule and companion Proposed Rule amending 10 CFR 2.715(c) and 10 CFR 2.1211(b) allowing Federally-recognized Indian tribes to participate on the same basis as States and other units of local government.

this Rulemaking does not involve a question of "policy" as intended in Manual Chapter 01-05-036(c). Accordingly, we consider this matter to be within the delegated authority of the Secretary.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments: 1. Draft Federal Register Notice for Immediately Effective Amendments to Part 2, Subpart L.

2. Draft Federal Register Notices for Direct Final Rule and companion Proposed Rule amending 10 CFR 2.715(c) and 10 CFR 2.1211(b) allowing Federally-recognized Indian tribes to participate on the same basis as States and other units of local government.

DOCUMENT NAME:G:Rulesecy.cem, Rule-L.cem, Rule-Trb.cem

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN: 3150-AG28

INFORMAL HEARING PROCEDURES FOR ADJUDICATIONS IN
MATERIALS AND OPERATOR LICENSING PROCEEDINGS:
MINOR AMENDMENTS

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the filing and service of Requests for Hearings and Petitions for Leave to Intervene in “informal” materials and operator licensing proceedings conducted under its Rules of Practice. This action is necessary to correct a cross-referencing error in the provisions concerning the method of filing documents and to change the method of service of pleadings on the NRC Staff.

EFFECTIVE DATE: This final rule is effective on publication in the Federal Register.

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:

Background

These amendments are designed to correct two minor errors in an earlier rulemaking and to make two minor changes regarding service of pleadings on the NRC Staff as a party in these proceedings. First, this rulemaking corrects a typographical error in the printing of a final rule published July 29, 1996 (61 FR 32978), amending Subpart L. That final rule included a reference in 10 CFR 2.1203(e) to 10 CFR 2.1205(R). The cross-reference to paragraph (R) should have appeared as a cross-reference to paragraph (k), as set out in the original proposed rule. The Commission is correcting that cross-reference.

Second, the 1996 rulemaking inserted a new paragraph (c) in 10 CFR 2.1205 and renumbered the existing paragraph (c) as paragraph (d) and all subsequent paragraphs accordingly. However, the rulemaking failed to correct a cross-reference to the original paragraph (c), now paragraph (d), in the original paragraph (f), now paragraph (g). The Commission is correcting that cross-reference.

Third, this rulemaking makes two minor changes in the service of specific pleadings in these proceedings by designating that service of Requests for Hearings and Petitions for Leave to Intervene on the NRC Staff shall be made by serving those documents on the General Counsel, rather than on the Executive Director for Operations as currently required. Eventually, the Executive Director for Operations must refer any pleading to the General Counsel for a response to the Presiding Officer. The Commission has found that pleadings are sometimes lost or delayed by not having them filed directly with the General Counsel. Accordingly, the Commission has concluded that direct service on the General Counsel will eliminate any delay and increase the efficiency of its adjudicatory processes.

Because these amendments are administrative in nature and deal solely with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(A). In addition, good cause exists to dispense with the usual 30-day delay because the amendments are of a corrective and administrative nature dealing with

a matter of agency conduct, a change in the manner in which proceedings shall be served on the NRC Staff. Accordingly, these amendments are effective upon publication in the Federal Register.

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 does not contain a new or amended information collection requirement 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 final rule because this rule is considered a minor non-substantive amendment; it has no economic 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 Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the 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 of 1954, 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, 183i 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 §2.1203, paragraph (e) is revised to read as follows:

§2.1203 Docket; filing; service.

* * * * *

(e) A request for a hearing or a petition for leave to intervene must be served in accordance with §2.712 and §§2.1205 (f) and (k). All other documents issued by the presiding officer or the Commission or offered for filing are served in accordance with §2.712.

3. In §2.1205, paragraphs (f)(2), (k)(1)(i), and (k)(1)(ii) are revised to read as follows:

§2.1205 Request for a hearing; Petition for leave to intervene.

* * * * *

(f) * * *

(2) The NRC Staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

* * * * *

(g) Within ten (10) days of service of a request for a hearing filed under paragraph (d) of this section, the applicant may file an answer. The NRC staff, if it chooses or if it is ordered to participate as a party under §2.1213, may file an answer to a request for a hearing within ten (10) days of the designation of the presiding officer.

* * * * *

(k) * * *

(1) * * *

(i) By delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) By mail addressed to the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555.

* * * * *

Dated at Rockville, Maryland this ___ day of March, 1999.

For the Nuclear Regulatory Commission

Annette Vietti-Cook
Secretary of the Commission.

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

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 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.

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, 183i 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.

* * * * *

(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 ___ day of March, 1999.

For the Nuclear Regulatory Commission

Annette Vietti-Cook,
Secretary of the Commission.

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

RIN: 3150-AG27

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

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed 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.

DATES: Comments on the proposed rule must be received on or before [30 days after the date of publication in the Federal Register].

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

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:

For additional information, see the Direct Final Rule published in the Rules and Regulations section of this Federal Register.

Because the NRC considers this action noncontroversial and routine, the NRC is publishing the rule in final form without 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.

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. 553, the NRC is proposing to adopt 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, 183i 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.

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

§2.1211 Participation by a person not a party.

* * * * *

(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 ___ day of March, 1999.

For the Nuclear Regulatory Commission

Annette Vietti-Cook
Secretary of the Commission