

August 14, 1998

**FOR:** The Commissioners

**FROM:** Karen D. Cyr /s/  
General Counsel

**SUBJECT:** Proposed Rule - Revision to Part 2 Establishing Subpart M to Govern Requests for License Transfer Approval and Associated Requests for Hearings.

**PURPOSE:**

To seek Commission approval to publish the attached proposed rule.

**BACKGROUND AND DISCUSSION:**

Recently the Commission has embarked on a review of NRC hearing procedures to determine whether there are potential adjustments that can be made to provide improved efficiencies to the hearing processes within the requirements of the Commission's governing statutes and consistent with the goal of providing opportunities for public input into the NRC decisionmaking process. This review is exemplified by the recent development of a policy statement governing hearings under 10 CFR Part 2. (See COMSECY-98-015 and CLI-98-12).

This paper proposes a streamlined hearing process to handle a particular type of NRC approval. Specifically, it addresses requests for NRC approval of license transfers. As the Commission has noted in communications with Congress, requests for approval of license transfers involving power reactors have significantly increased from an average of 2-3 per year prior to FY1996 to a high of 21 requests in FY 1997.<sup>(1)</sup> In addition, the move toward substantial economic deregulation and restructuring in the electric utility industry is likely to result in a continuing high level of activity involving reactor ownership changes and license transfers requiring NRC review and approval.

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Historically, there have not been a significant number of requests for hearings related to license transfers, but the increase in applications for transfers and the potential for further increases as a result of energy industry restructuring make it prudent to consider the appropriate procedures for handling associated hearing requests. Typical license transfers do not involve significant changes to the method of facility operation and many transfers focus on changes in ownership or partial ownership of facilities at a corporate level. Effective and efficient NRC review and determination of whether to approve transfers, however, is important to the public and the parties involved, since there are frequently alleged to be benefits to ratepayers, customers, utilities and stockholders from the proposed transfers. Time is frequently of the essence in corporate mergers and acquisitions, which must comply with requirements for approvals by other state and federal agencies, as well as by the NRC. License transfers rarely involve complex technical issues related to actual facility operation that might warrant the type of technical review that is typically used by the Commission in issuing original licenses or issuing amendments to licenses that effect the technical operations of a licensed reactor facility. The same is generally true of applications involving the transfer of materials licenses.<sup>(2)</sup> Recognizing that license transfer issues differ, and are normally handled in a manner that differs, from license issuance and license amendment actions, the General Counsel's office reviewed current procedures for handling hearing requests on applications for license transfers to determine if a simpler more efficient process for handling requests for hearings on transfer applications could be developed.

Several provisions of the Atomic Energy Act of 1954, as amended (AEA) provide guideposts for developing an appropriate hearing process for license transfers. The AEA provides at 184 that:

[n]o license granted hereunder ... shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

42 U.S.C. 2234. The basic requirement for an opportunity for a hearing on a license transfer is found in Section 189.a of the Atomic Energy Act of 1954, as amended (AEA), which provides that:

[i]n any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or any application to transfer control,...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.

42 U.S.C. 2239(a)(1).

The Commission believes AEA sections 184 and 189 give the Commission the flexibility to fashion procedures which provide for a fair process to consider any issues raised concerning license transfers while still proceeding in an expedited manner. In 1983, a hearing on a materials license amendment was held not to be required by statute, i.e. 189.a of the Atomic Energy Act, to be conducted "on the record". *City of West Chicago v. U.S. Nuclear Regulatory Commission*, 701 F.2d 632, 641-45 (7<sup>th</sup> Cir. 1983). There, the court declined to read section 189.a as requiring "on-the-record" hearings, in the absence of clear Congressional "intent to trigger the formal on-the-record hearing provisions of the APA." *Id.* at 641. The Commission has since stated that it interprets section 189.a as not requiring formal hearings in reactor licensing proceedings. *En Banc* Brief for Respondents dated August 30, 1991 (filed in the U.S. Court of Appeals for the District of Columbia Circuit, No. 89-1381, *Nuclear Information and Resource Service v. NRC*, at pp. 32-

During the past several years, the Commission has, on several occasions, undertaken to tailor procedures appropriate to reaching decisions on particular types of proposed actions. These approaches have been upheld by the courts using the principles set forth in *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-844 (1984). In *Nuclear Information Resource Serv. V. Nuclear Regulatory Commission*, 969 F.2d 1169 (D.C. Cir. 1992), upholding the Commission's new procedures for issuance of a combined license for standardized reactor designs, the Court noted that

While this section [189.a] plainly requires a "hearing upon request" before the "granting" of a license, it provides no unambiguous instruction as to how the "hearing" is to be held; nor does it speak in any direct fashion to the question of whether the Commission must rehear issues already resolved at earlier stages in the licensing process. As we noted in *Union of Concerned Scientists v. NRC*, 920 F.2d 50 (D.C. Cir. 1990) ("UCS II"):

[t]he [Atomic Energy] Act itself nowhere describes the content of a hearing or prescribes the manner in which this "hearing" is to be run.... We are, of course, obliged to defer to the operating procedures employed by the agency [i.e., move to a *Chevron* step II analysis] when the governing statute requires only that a "hearing" be held. (emphasis in original).

In *Kelley v. Selin*, 42 F.3d 1501, 1511 (6<sup>th</sup> Cir. 1995), the court followed a similar line of reasoning in concluding that the procedures adopted by the Commission to approve casks for spent nuclear fuel storage were acceptable. These decisions give us confidence that an interpretation of 189.a to permit the kind of procedures we propose here will find judicial support. (3)

The Commission's previous findings and the language of the AEA are not limited to reactor license transfers. Hence, OGC's review of the hearing procedure question encompassed both materials and reactor license transfers. Based on that review, OGC proposes to initiate rulemaking to establish legislative-style hearing procedures for reactor and materials license transfers. These procedures, modeled after the hearing procedures for export licensing in 10 C.F.R. Part 110, recognize the initial staff review and action on a license transfer application that is normally followed by the staff's issuance of an order that approves, disapproves or conditions the license transfer. Under the proposed procedures, notice of receipt of the application will be provided by placing the application in the Public Document Rooms or, for certain types of facilities (reactor and fuel cycle facilities), by publication of a notice of receipt in the Federal Register. Petitioners must request a hearing within certain time periods following these notices. The staff may proceed with its review and issue its initial order on the application independent of the filing of requests for hearing. If a hearing is requested by, and granted to, one or more persons whose interests may be affected by the license transfer, the Commission will proceed to schedule and conduct a hearing itself or appoint a presiding officer to conduct the hearing and assemble a record for decision.

Formal discovery will not be permitted but the application and related NRC and applicant and petitioner documents will be assembled in a docket file and made available to all parties. The NRC staff need not be a party to the hearing but the staff will provide witnesses to sponsor and support its Safety Evaluation Report and initial action on the application. Unless otherwise agreed by the parties, the hearing will be oral. The hearing will involve the presentation and support of direct evidence and documentary exhibits by appropriate witnesses or witness panels and questioning of the witnesses by the Presiding Officer. Direct questions and cross-examination by the parties will not be permitted, but the parties may submit questions for the Presiding Officer to consider.

The full Commission normally will serve as the Presiding Officer and conduct the hearing. However, the Commission may, in its discretion, appoint one or more Commissioners or any other person to serve as Presiding Officer. If other than the full Commission is the Presiding Officer, the Presiding Officer will compile the evidentiary record and submit it to the Commission without preparing a preliminary or recommended decision on the merits.

The proposed rules would impose schedular milestones for the filing of testimony and responses and for the commencement of the oral hearing. Subject to the Presiding Officer scheduling adjustments in particular proceedings, the proposed rules would impose filing and action deadlines in reactor license transfer proceedings as follows:

Day	Action
0	- Notice of receipt of license transfer application is published
20	- Requests for hearing due
30	- Answers to requests for hearing filed
35	- Replies to answers to requests for hearing filed
50 (assumed)	- Commission decision on request for hearing
80	- Written testimony filed
100	- Rebuttal testimony and proposed questions filed
115	- Hearing starts
125 (assumed)	- Hearing ends
145	- Post-Hearing statements filed

Assuming that the NRC staff is able to complete its technical review and take initial action on the transfer application within 3 to 4 months of its receipt of the application, these procedures are expected to result in the issuance of a final Commission decision, based on the hearing record, within about 6 to 8 months of the receipt of the application in routine cases. Complex cases requiring more extensive review or the use of different hearing procedures will take more time.

As noted, under these proposed procedures, the Commission itself (rather than a presiding officer or a licensing board) (1) rules on intervention petitions and the proper issues for hearing, and (2) issues the written decision on the hearing issues. As a practical matter, the Office of Commission Appellate Adjudication (OCAA), with OGC's assistance in some circumstances, will draft the proposed Commission decision on intervention based on the pleadings filed by the petitioners and the parties and will draft the proposed Commission decision on the merits based on the evidentiary record compiled in the hearing. Depending on the number and complexity of the license transfer hearing actually held, OCAA's personnel resources may need to be augmented in order to meet the goal of issuing final decisions within 6 to 8 months of the receipt of the application.

#### **EXPEDITED RULEMAKING**

Because the Commission is interested in timely action to address concerns about the NRC's hearing processes, OGC has not prepared a rulemaking plan for this proposal but has proceeded directly to the formulation of proposed rules. In order to proceed with implementation of new hearing procedures for license transfer in a timely fashion (if the Commission approves this rulemaking proposal), OGC would propose the following milestone schedule for this rulemaking:

<b>Day</b>	<b>Action</b>
0	Proposed rule is submitted to the Commission
7	Commission approves proposed rule
14	Proposed rule is published in the Federal Register for comment
44	30 day comment period ends
65	Final rule is submitted to the Commission
76	Commission approves/affirms final rule
83	Final rule is published in the Federal Register
113	Final rule is effective

Under this proposed milestone schedule, we anticipate issuance of the final rule about mid- November 1998, to become effective in mid-December 1998.

#### **COORDINATION:**

This draft rule has been coordinated with the EDO, the CFO and the CIO, none of whom expressed objections to the proposal.

#### **RECOMMENDATION:**

Approve publication of the attached draft Federal Register Notice and Proposed Rule for a 30 day comment period.

Karen D. Cyr  
General Counsel

Attachment: Federal Register Notice with Proposed Rule

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Title 10 - Energy  
Chapter 1 - Nuclear Regulatory Commission  
Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders  
Agency: U.S. Nuclear Regulatory Commission  
Action: Proposed Rule **Summary:**

The Nuclear Regulatory Commission is proposing to amend its regulations by adding a new Subpart to Part 2 of its regulations to provide specific uniform procedures and rules of practice for handling requests for hearings associated with license transfer applications involving both material and reactor licensees. Conforming amendments are also made to certain other parts of the Commission's regulations. This new "Subpart M" provides for public participation and opportunity for an informal hearing on matters relating to license transfers, specifies procedures for filing and docketing applications for license transfers, and assigns appropriate authorities for issuance of administrative amendments to reflect approved license transfers. This rulemaking also adds a categorical exclusion to 10 C.F.R. 51.22(c) which will permit processing of transfer applications without preparation of Environmental Assessments.

#### **Dates:**

The comment period expires (30 days after publication). Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Comments may be submitted either electronically or in written form.

ADDRESSES: Written comments should be sent to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (<http://www.nrc.gov>). From the home page, select "Rulemaking" from the tool bar. The interactive rulemaking web site can then be accessed by selecting "Rulemaking Forum." This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@nrc.gov.

Single copies of this proposed rulemaking may be obtained by written request to the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington DC 20555, or by faxing a request to (301) 415-2289. Comments received on this rulemaking, may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph R. Gray, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 telephone (301) 415-1740, E-mail JRG@NRC.GOV.

## Supplementary Information:

### Introduction and Purpose

As part of broader efforts to improve the effectiveness of the agency's programs and processes, the Commission has begun an examination of its practices and procedures for considering proposed licensing and regulatory actions before it. The Commission recently issued a "Statement of Policy on Conduct of Adjudicatory Proceedings" directing its hearing boards and presiding officers to employ certain measures to ensure efficient conduct of proceedings within the framework of 10 C.F.R. Part 2, Subpart G, the agency's formal adjudicatory hearing procedures. See 63 F.R. 41,872 (1998).

A number of categories of NRC licensees, but in particular the electric power industry, have undergone and will continue to undergo significant transformations as a result of changes to the economic and regulatory environment in which they operate. Electric utilities in particular are now operating in an environment which is increasingly characterized by restructuring and organizational change. In recent years, the Commission has seen a significant increase in the number of requests for transfers of NRC licenses. The number of requests related to reactor licenses has increased from a historical average of 2-3 per year to more than 20 requests in fiscal year 1997. With the restructuring that the energy industry is undergoing, we expect this high rate of requests for approval of license transfers to continue. Because of the need for expeditious decision making from all agencies, including the Commission, for these kinds of transactions, timely and effectively resolution of requests for transfers on the part of the Commission is essential.

In general, license transfers do not involve any changes to plant operations or significant changes in personnel of consequence to the continued reasonable assurance of public health and safety, but rather involve changes in ownership or partial ownership of facilities at a corporate level. Section 184 of the Atomic Energy Act of 1954, as amended (AEA), specifies, however, that:

[n]o license granted hereunder...shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

42 U.S.C. 2234; 10 C.F.R. 30.34(b), 40.46, 50.80. Transfers falling within the foregoing provision include indirect transfers which might entail, for example, the establishment of a holding company over an existing licensee, as well as direct transfers, such as transfer of an ownership interest held by a non-operating, minority owner, and the complete transfer of the ownership and operating authority of a single or majority owner. Although other requirements of the Commission's licensing provisions may also be addressed to the extent relevant to the particular transfer action, typical staff review of such applications consists largely of assuring that the ultimately licensed entity has the capability to meet financial qualification and decommissioning funding aspects of NRC regulations. These financial capabilities are important over the long term, but have no direct or immediate impact on the requirements for day-to-day operations at a licensed facility. The same is generally true of applications involving the transfer of materials licenses.

Notwithstanding the nature of the issues relevant to a decision on whether to give consent to a license transfer, past Commission practice has generally used formal hearing procedures in accordance with the provisions of 10 C.F.R. Part 2, Subpart G, for reactor license transfers or informal hearing procedures as provided by 10 C.F.R. Part 2, Subpart L, in connection with materials licenses. As explained above, however, such transfers do not, as a general proposition, involve the type of complex technical issues with immediate impact on the actual operation of the facilities that could benefit from review by a multi-member, multi-disciplined Atomic Safety and Licensing Board typically used by the Commission in hearings on initial licensing or issuing amendments to licenses that substantially affect the technical operations of a licensed reactor facility. Accordingly, the Commission has determined that requests for hearings on applications for license transfers would be more effectively handled by a separate Subpart of 10 C.F.R. Part 2 which establishes an efficient and appropriate process for handling hearing requests associated with transfer applications commensurate with the nature of the issues involved and the rights of all parties.

The basic requirement for an opportunity for a hearing on a license transfer is found in Section 189.a of the Atomic Energy Act of 1954, as amended (AEA), which provides that:

[i]n any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or any application to transfer control,...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.

42 U.S.C. 2239(a)(1).

The Commission believes AEA sections 184 and 189 give the Commission the flexibility to fashion procedures which provide for a fair process to consider any issues raised concerning license transfers while still proceeding in an expedited manner. In 1983, a hearing on a materials license amendment was held not to be required by statute, i.e. 189.a of the Atomic Energy Act, to be conducted "on the record". *City of West Chicago v. U.S. Nuclear*

*Regulatory Commission*, 701 F.2d 632, 641-45 (7<sup>th</sup> Cir. 1983). There, the court declined to read section 189.a as requiring "on-the-record" hearings, in the absence of clear Congressional "intent to trigger the formal on-the-record hearing provisions of the APA." *Id.* at 641. The Commission has since stated that it interprets section 189.a as not requiring formal hearings in reactor licensing proceedings. *En Banc* Brief for Respondents dated August 30, 1991 (filed in the U.S. Court of Appeals for the District of Columbia Circuit, No. 89-1381, *Nuclear Information and Resource Service v. NRC* at pp. 32-38.

During the past several years, the Commission has, on several occasions, undertaken to tailor procedures appropriate to reaching decisions on particular types of proposed actions. These approaches have been upheld by the courts using the principles set forth in *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-844 (1984). In *Nuclear Information Resource Service v. Nuclear Regulatory Commission*, 969 F.2d 1169 (D.C. Cir. 1992), upholding the Commission's new procedures for issuance of a combined license for standardized reactor designs, the Court noted that

While this section [189.a] plainly requires a "hearing upon request" before the "granting" of a license, it provides no unambiguous instruction as to how the "hearing" is to be held; nor does it speak in any direct fashion to the question of whether the Commission must rehear issues already resolved at earlier stages in the licensing process. As we noted in *Union of Concerned Scientists v. NRC*, 920 F.2d 50 (D.C. Cir. 1990) ("UCS II"):

[t]he [Atomic Energy] Act itself nowhere describes the *content of a hearing or prescribes the manner in which this "hearing" is to be run*.... We are, of course, obliged to defer to the operating procedures employed by the agency [i.e., move to a *Chevron* step II analysis] when the governing statute requires only that a "hearing" be held. (emphasis in original).

In *Kelley v. Sellin*, 42 F.3d 1501, 1511 (6<sup>th</sup> Cir. 1995), the court followed a similar line of reasoning in concluding that the procedures adopted by the Commission to approve casks for spent nuclear fuel storage were acceptable. These decisions give the Commission confidence that an interpretation of section 189.a to permit the kind of procedures we propose here will find judicial support.<sup>(4)</sup>

To promote uniformity, the proposed hearing procedures for license transfers will apply to both materials and reactor licenses. The procedures are designed to provide for public participation in the event of requests for a hearing under these provisions, while at the same time providing an efficient process that recognizes the time-sensitivity normally present in transfer cases.

The proposed procedures would cover any direct or indirect transfer for which NRC approval is required pursuant to the regulatory provisions under which the license was issued. NRC regulations and the Atomic Energy Act require approval of any transfer of control of a license. See AEA, Sec. 184. 42 U.S.C. 2234. This would include those transfers that require license amendments and those that do not. It should be recognized that not all license transfers will require license amendments. For example, the total acquisition of a licensee, without a change in the name of the licensee, (e.g., through the creation of a holding company which acquires the existing licensee but which, beyond ownership of the licensee, does not otherwise affect activities for which a license is required), would require NRC approval, but would not necessarily require any changes in the NRC license for the facilities owned by the licensee.

These procedures do not expand or change the circumstances under which NRC approval of a transfer is necessary nor do they change the circumstances under which a license amendment would be required to reflect an approved transfer. Amendments to licenses are only required to the extent that ownership or operating authority of a licensee, as reflected in the license itself, is changed by a transfer. A discussion of the process for issuing amendments associated with an approved transfer, when necessary, is provided below.

The proposed procedures, similar to those used by the Commission in cases involving export and import licensing hearings under 10 C.F.R. Part 110, provide for a legislative type hearing for license transfers. These procedures will provide opportunities for meaningful public participation while minimizing areas where a formal adjudicatory process could introduce delays without any commensurate benefit to the substance of the Commission's decisionmaking.

The Commission will either elect to develop an evidentiary record and render a final decision itself, or will appoint a Presiding Officer who will be responsible for collecting evidence and developing a record for submission to the Commission. For such proceedings, the Commission may appoint a Presiding Officer from the Atomic Safety and Licensing Board Panel (ASLBP), although the proposed regulations do not restrict the sources from which the Commission may select.

It should be noted that the regulations do not require the NRC staff to participate in the proceedings as a formal party unless the Commission directs the use of Subpart G procedures or otherwise directs the staff to participate as a party. The Commission expects, nevertheless, that, in most cases, the staff will participate to the extent that it will offer into evidence staff's Safety Evaluation Report that supports its conclusions on whether to initially grant or deny the requested license transfer and provide one or more appropriate sponsoring witnesses. Greater staff involvement may be directed by the Commission on its own initiative or at the staff's choosing, as circumstances warrant.

One aspect of the proposed rule designed to improve efficiency is the decision to require oral hearings on all transfers where a hearing is to be held under Subpart M, with very limited exceptions. It has been the Commission's experience under Subpart L proceedings that intervenors are particularly interested in having the opportunity to make oral presentations or arguments for inclusion in the record. Even though such requests are rarely granted,<sup>(5)</sup> intervenors can and do introduce the issue of whether to have oral presentations in individual proceedings. Rather than allow the issue of oral presentations to become a point of contention in individual proceedings (which could introduce unnecessary delays in completing the record) the proposed rule would resolve this concern by ensuring that all parties have the opportunity to present oral arguments and evidence. The question of whether cross examination of witnesses should be allowed has also introduced an area for argument in Subpart L proceedings.<sup>(6)</sup> The Commission has addressed this area of potential dispute in the proposed rules by providing for questioning of witnesses only by the Presiding Officer. Although only the Presiding Officer may question witnesses, the proposed rules specifically provide parties the opportunity to present recommended questions to the

Presiding Officer.

Another aspect of the rule intended to improve the efficiency of the adjudicatory process is that, while it does not provide for any separate discovery, it does require that a Hearing Docket containing all relevant documents and correspondence be established and be made available at the Commission's Public Document Room. This approach is in keeping with establishment of a case file as described in the Commission's recent *Statement of Policy on Conduct of Adjudicatory Proceedings*, 63 F.R. 41,872 (1998).

Finally, to improve the efficiency of the adjudicatory process, the proposed rules would impose schedular milestones for the filing of testimony and responses and for the commencement of oral hearings. Subject to the Presiding Officer's scheduling adjustments in particular proceedings, the proposed procedures would require initial testimony, statements of position on the issues and responsive testimony to be filed within 50 days of the Commission's decision to grant a request for a hearing, and the hearing would commence in just over two months from the Commission's decision to hold a hearing. Assuming that the NRC staff is able to complete its technical review and take initial action on the transfer application within three to four months of its notice of receipt of the application, these procedures are expected to result in the issuance of a final Commission decision on the license transfer within about six to eight months of the notice of receipt of the application in routine cases. Complex cases requiring more extensive review or the use of different hearing procedures may take more time.

#### **Administrative License Amendments Associated with License Transfers**

As discussed above, not all license transfers require license amendments. Only when the license specifically has reference to entities or persons that no longer are accurate following the approved transfer will a situation exist that requires amendments to the license. Such amendments are essentially administrative in nature. That is, in determining whether to approve such amendments, the only issue is whether the license amendment accurately reflects the approved transfer. Substantive issues regarding requests for a hearing on the appropriateness of the transfer itself may only be considered using the procedures in this proposed rule. The Commission has previously noted that issuance of such an administrative amendment, following the review and approval of the transfer itself, "presents no safety questions and clearly involves no significant hazards considerations." *Long Island Lighting Company, supra*, 35 NRC at 77, n.6.

Safety Evaluation Reports (SERs) prepared in connection with previous license transfers confirm that such transfers do not, as a general matter, have significant impacts on the public health and safety. Accordingly, the proposed regulations provide that conforming amendments to the license may be issued by the staff at any time after the staff has reviewed and approved the proposed transfer, notwithstanding the pendency of any hearing under the proposed Subpart M. As is done currently, staff approval of a transfer application will take the form of an order. Such order will also identify any license amendment issued.

The Commission, through this rulemaking, is making a generic finding that, for purposes of 10 C.F.R. 50.58(b)(5), 50.91 and 50.92, administrative amendments which do no more than reflect an approved transfer and do not directly affect actual operating methods and actual operation of the facility do not involve a "significant hazards consideration" and do not require that a hearing opportunity be provided prior to issuance. It must be emphasized that any post-effectiveness hearing on such administrative amendments will be limited to the question of whether the amendment accurately reflects the approved transfer. The Commission does note, however, that it retains the authority, as a matter of discretion, to direct completion of hearings prior to issuance of the transfer approval and any required amendments in individual cases and to direct the use of other hearing procedures, if the Commission believes it is in the interest of public health and safety to do so.

#### **Environmental Issues**

The staff has completed numerous Environmental Assessments related to license transfers. These assessments have uniformly demonstrated that there are no significant environmental effects from license transfers. Indeed, as the Commission has noted previously, amendments effectuating an approved transfer present no safety questions and involve no significant hazards considerations.<sup>(7)</sup> Accordingly, the Commission has determined that a new categorical exclusion should be added to 10 C.F.R. Part 51 which will obviate the need for the staff to continue to conduct individual Environmental Assessments in each transfer case.

#### **Limitation to License Transfers**

The Commission wishes to emphasize that the proposed rules address only license transfers and associated administrative amendments to reflect transfers. Requests for license amendments which involve changes in actual operations or requirements directly involving health and safety-related activities will continue to be subject to the amendment processes currently in use, including the requirement for individualized findings under 10 C.F.R. 50.58, 50.91 and 50.92 that address the necessity for pre-effectiveness hearings.

#### **Finding of No Significant Environmental Impact and Categorical Exclusion**

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in Subpart A of 10 C.F.R. Part 51, that this rule, if adopted, falls within the categorical exclusion appearing at 10 C.F.R. 51.22 (c)(1) for which neither an Environmental Assessment nor an Environmental Impact Statement is required.

Further, under its procedures for implementing NEPA, the Commission may exclude from preparation of an environmental impact statement, or an environmental assessment, a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in NRC proceedings. In this rulemaking, the Commission proposes to find that the approval of a direct or indirect license transfer, as well as any required administrative license amendments to reflect the approved transfer, comprise a category of actions which do not individually or cumulatively have a significant effect on the human environment. Actions in this category are similar in that, under the AEA and

Commission regulations, transfers of licenses (and associated administrative amendments to licenses) will not in and of themselves permit the licensee to operate the facility in any manner different from that which has previously been permitted under the existing license. Thus, the transfer will usually not raise issues of environmental impact that differ from those considered in initial licensing of a facility. In addition, the denial of a transfer would also have, in and of itself, no impact on the environment, since the licensee would still be authorized to operate the facility in accordance with the existing license.

Environmental assessments that have been conducted regarding numerous license transfers under existing regulations have not demonstrated the existence of a major federal action significantly affecting the environment. Further, the proposed regulations do not apply to any request for an amendment that would directly affect the actual operation of a facility. Amendments that directly affect the actual operation of a facility would be subject to consideration pursuant to the existing license amendment processes, including the requirements in 10 C.F.R. Part 2, Subparts G or L, as appropriate and applicable environmental review requirements of 10 C.F.R. Part 51.

#### **Paperwork Reduction Act Statement**

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

#### **Backfit Analysis**

The NRC has determined that the backfit rule, 10 C.F.R. 50.109, does not apply to this proposed rule and a backfit analysis is not required, because these amendments do not involve any provisions that would impose backfits as defined in 10 C.F.R. 50.109. The rule does not constitute a backfit under 10 C.F.R. 50.109, because it does not propose a change to or additions to requirements for existing structures, systems, components, procedures, organizations or designs associated with the construction or operation of a facility.

#### **Regulatory Analysis**

To determine whether the amendments to 10 C.F.R. Part 2 contained in this proposed rule were appropriate, the Commission considered the following options:

##### *1. The No-Action Alternative*

This alternative was not deemed acceptable for the following reasons. First, this option would leave reactor transfers subject to hearings using multi-member, multi-disciplined licensing boards, even though such transfers do not involve the type of complex technical questions for which multi-member boards of diverse background may provide a useful technical pool of experience.

Second, the formal adjudicatory hearing process would needlessly add formality and resource burdens to the development of a record for reaching a decision on applications for transfer approval without any commensurate benefit to the public health and safety or the common defense and security.

Third, the current process for materials licensees under 10 C.F.R. Part 2, Subpart L, while not utilizing the multi-member licensing boards, does not necessarily result in uniform treatment of all license transfer requests, and provides at least the potential for more formal hearings. Even if the requests for more formal procedures are not granted in typical materials cases, the process of receiving motions for more formal procedures, allowing responses from all parties to those requests, and the need for the Presiding Officer to consider and rule on such requests introduces issues and litigation on matters not involving the merits of the particular application and thus introduces the potential for delays in materials license transfer proceedings, without clear benefit to the public health and safety or the common defense and security.

##### *2. Use 10 C.F.R. Part 2, Subpart G for all license transfers*

While assuring uniformity for all license transfer requests, this option would not result in an expeditious process that would avoid the use of multi-member licensing boards which is unnecessary given the nature of typical transfer applications. It would also result in added formality and resources being devoted to materials license transfers on the part of all parties to the hearing, without any resulting benefit to public health and safety.

##### *3. Use of 10 C.F.R. Part 2, Subpart L for all license transfers*

This option was considered as viable to achieve uniformity and to avoid the need for multi-member licensing boards for conducting requested hearings. Subpart L provides for paper hearings unless oral presentations are ordered by the Presiding Officer. Further, Subpart L allows the Presiding Officer the option of recommending to the Commission that more formal procedures be used. Even though such requests are rarely granted, as a practical matter, there are delays in the proceeding while parties petition the Presiding Officer and/or the Commission to have oral hearings and to use additional procedures, such as cross-examination and formal discovery. Such discretion in structuring individual hearings is appropriate where the breadth of potential actions and licensees (covering essentially all amendments for a wide variety of materials licensees) is governed by a single hearing process. This flexibility, however, inevitably leads to delays as each party to the hearings proposes and presents arguments to the Presiding Officer concerning how the hearing should be structured.

Where, as in the proposed rule, the Commission is concerned with only one type of approval, the Commission has the ability to resolve through rulemaking many of these procedural points concerning the conduct of the hearing. The resolution of these issues will allow the parties in license transfer proceedings to move expeditiously to examination of the substantive issues in the proceeding. The proposed process, similar to a legislative-type hearing, will also result in the record promptly reaching the Commission where a final agency determination can be made. The proposed rule dictates

that oral hearings be held on each application for which a hearing request is granted unless the parties unanimously agree to forgo the oral hearing. This will remove the potential for a delay while parties petition the Presiding Officer for an oral hearing. Further, the proposed rule provides that the Presiding Officer will conduct all questioning of witnesses and there are no provisions for formal discovery, although docket files with relevant materials will be publicly available. The proposed rule resolves several areas of frequent dispute in Subpart L proceedings and was seen, therefore, as being more appropriate for license transfer proceedings where a timely decision is important to the public interest. These efficiencies can be achieved without any negative effect on substantive decisionmaking or the rights of all parties to a full and fair hearing since all parties will be allowed to present relevant witnesses, written testimony, and oral arguments, which should result in a high quality record on substantive issues for use by the Commission in reaching a decision on contested issues.

### Regulatory Flexibility Certification

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 proposed rule does not change any requirements for submittal of license transfer requests to NRC, rather, the procedures designate how NRC will handle requests for hearings on applications for license transfers. Most requested hearings on license transfer applications involve reactor licensees which are large organizations which do not fall within the definition of a small business found in section 3 of the Small Business Action, 15 U. S. C. 632, or within the small Business Standards set forth in 13 C.F.R. Part 121. Based on the historically low number of requests for hearings involving materials licensees, it is not expected that this rule will have any significant economic impact on a substantial number of small business.

### PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised 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. 10134(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). Sections 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. 890, as amended by section 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (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, 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. 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 Part 2, Section 2.101 is revised by amending paragraph (a)(1) to read:

2.101 . . .

(a)(1) An application for a license , a license transfer, or an amendment to a license shall be filed with the Director of the Office of Nuclear Reactor Regulation or Director of the Office of Nuclear Material Safety and Safeguards, as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the staff prior to the filing of an application.

3. In Part 2, Section 2.1201(a)(1) is amended to read:

2.1201....

(a)...

(1) The grant, renewal or licensee-initiated amendment of a materials license subject to parts 30, 32 through 35, 39, 40, or 70 of this chapter, with the exception of license amendments related to an application to transfer a license; or

4. In Part 2, Section 2.1205, paragraphs (a) and the first sentence of paragraph (b), are revised to read:

2.1205...

(a) Any person whose interest may be affected by a proceeding for the grant, renewal, or licensee-initiated amendment of a license subject to this Subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, or a license renewal who is issued a notice of proposed denial or a notice of denial and who desires a hearing shall file the request for a the hearing within the time specified in 2.103 in all cases. ...

5. In Part 2, a new Subpart M is added which reads:

**Subpart M - Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on Licensed Transfer Applications**

- 2.1300 Scope of Subpart M
- 2.1301 Public Notice of Receipt of a License Transfer Application
- 2.1302 Notice of Withdrawal of an Application
- 2.1303 Availability of Documents In the Public Document Room
- 2.1304 Hearing Procedures
- 2.1305 Written Comments
- 2.1306 Hearing Request or Intervention Petition
- 2.1307 Answers and Replies
- 2.1308 Commission Action on a Hearing Request or Intervention Petition
- 2.1309 Notice of Oral Hearing
- 2.1310 Notice of Hearing Consisting of Written Comments
- 2.1311 Conditions in a Notice or Order
- 2.1312 Authority of the Secretary
- 2.1313 Filing and Service
- 2.1314 Computation of Time
- 2.1315 Generic Determination Regarding License Amendments to Reflect Transfer
- 2.1316 Authority and Role of NRC Staff
- 2.1317 Hearing Docket
- 2.1318 Acceptance of Hearing Documents
- 2.1319 Presiding Officer
- 2.1320 Responsibility and Power of the Presiding Officer in an Oral Hearing
- 2.1321 Participation and Schedule for Submissions in a Hearing Consisting of Written Comments
- 2.1322 Participation and Schedule for Submissions in an Oral Hearing
- 2.1323 Presentation of Testimony in an Oral Hearing
- 2.1324 Appearance in an Oral Hearing
- 2.1325 Motions and Requests
- 2.1326 Burden of Proof
- 2.1327 Application for a Stay of the Effectiveness of NRC Staff Action on License Transfer
- 2.1328 Default
- 2.1329 Waiver of a Rule or Regulation
- 2.1330 Reporter and Transcript for an Oral Hearing
- 2.1331 Commission Action

2.1300 - **Scope of Subpart M**

This Subpart governs requests for, and procedures for conducting, hearings on any application for the direct or indirect transfer of control of an NRC license which transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. This Subpart is to provide the only mechanism for requesting hearings on license transfer requests, unless contrary case specific orders are issued by the Commission.

2.1301 - **Public Notice of Receipt of a License Transfer Application**

(a) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application

in the NRC Public Document Room.

(b) The Commission will also publish in the Federal Register a notice of receipt of an application for approval of a license transfer involving Part 50 and Part 52 licenses and major fuel cycle facility licenses issued under Part 70. This notice constitutes the notice required by

2.105 with respect to all matters related to the application requiring NRC approval.

(c) Periodic lists of applications received may be obtained upon request addressed to the Public Document Room, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

#### **2.1302 - Notice of Withdrawal of an Application**

The Commission will notice the withdrawal of an application by publishing the notice of withdrawal in the same manner as the notice of receipt of the application was published under Section 2.1301 of this Subpart.

#### **2.1303 - Availability of Documents In the Public Document Room**

Unless exempt from disclosure under Part 9 of this chapter, the following documents pertaining to each application for a license transfer requiring Commission approval will be placed in the Public Document Room when available:

- (a) The license transfer application and any associated requests;
- (b) Commission correspondence with the applicant or licensee related to the application;
- (c) Federal Register notices;
- (d) The staff Safety Evaluation Report (SER).
- (e) Any staff order which acts on the license transfer application; and
- (f) If a hearing is held, the hearing record and decision;

#### **2.1304 - Hearing Procedures**

The procedures in this Subpart will constitute the exclusive basis for hearings on license transfer applications for all NRC specific licenses.

#### **2.1305 - Written Comments**

(a) As an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding license transfer applications. The Commission will consider and, if appropriate, respond to these comments, but these comments do not otherwise constitute part of the decisional record.

(b) These comments should be submitted within 30 days after public notice of receipt of the application and addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemakings and Adjudications Staff.

(c) The Commission will provide the applicant with a copy of the comments. Any response the applicant chooses to make to the comments must be submitted within 10 days of service of the comments on the applicant. Such responses do not constitute part of the decisional record.

#### **2.1306 - Hearing Request or Intervention Petition**

(a) Any person whose interest may be affected by the Commission's action on the application may request a hearing or petition for leave to intervene on a license application for approval of a direct or indirect transfer of a specific license.

(b) Hearing requests and intervention petitions must--

(1) State the name, address, and telephone number of the requestor or petitioner;

(2) Set forth the issues sought to be raised and (i) demonstrate that such issues are within the scope of the proceeding on the license transfer application, (ii) demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer, (iii) provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issues and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issues, and (iv) provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

(3) Specify both the facts pertaining to the petitioner's interest and how the interest may be affected, with particular reference to the factors in 2.1308(a).

(4) Be served on both the applicant and the NRC Office of the Secretary by any of the methods for service specified in 2.1313.

(c) Hearing requests and intervention petitions will be considered timely only if filed not later than:

- (1) 20 days after notice of receipt is published in the Federal Register, for those applications published in the Federal Register;
- (2) 45 days after notice of receipt is placed in the Public Document Room for all other applications, or
- (3) Such other time as may be provided by the Commission.

#### 2.1307 **Answers and Replies**

- (a) Unless otherwise specified by the Commission, an answer to a hearing request or intervention petition may be filed within 10 days after the request or petition has been served.
- (b) Unless otherwise specified by the Commission, a reply to an answer may be filed within 5 days after all timely answers have been served.
- (c) Answers and replies should address the factors in 2.1308.

#### 2.1308 **Commission Action on a Hearing Request or Intervention Petition**

(a) In considering a hearing request or intervention petition on an application for a transfer of an NRC license, the Commission will consider:

- (1) The nature of the Petitioner's alleged interest;
- (2) Whether that interest will be affected by an approval or denial of the application for transfer;
- (3) The possible effect of any order on that interest, including whether the relief requested is within the Commission's authority, and, if so, whether granting the relief requested would redress the alleged injury; and
- (4) Whether the issues sought to be litigated are (i) within the scope of the proceeding, (ii) relevant to the findings the Commission must make to act on the application for license transfer, (iii) appropriate for litigation in the proceeding, and (iv) adequately supported by the statements, allegations and documentation required by 2.1306(b)(2)(iii) and (iv).

(b) Untimely hearing requests or intervention petitions may be denied unless good cause for failure to file on time is established. In reviewing untimely requests or petitions, the Commission will also consider:

- (1) The availability of other means by which the requestor's or petitioners' interest will be protected or represented by other participants in a hearing; and
- (2) The extent to which the issues will be broadened or final action on the application delayed.

(c) The Commission will deny a request or petition to that the extent it pertains solely to matters outside its jurisdiction.

(d) (1) After consideration of the factors covered by paragraphs (a) through (c), the Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the FEDERAL REGISTER and served on the parties to the hearing.

(2) Hearings under this Subpart will be oral hearings, unless, within 15 days of the service of the notice or order granting a hearing, the parties unanimously agree and file a joint motion requesting a hearing consisting of written comments. No motion to hold a hearing consisting of written comments will be entertained absent unanimous consent of all parties.

(3) A denial of a request for hearing and a denial of any petition to intervene will set forth the reasons for the denial.

#### 2.1309 - **Notice of Oral Hearing**

(a) A notice of oral hearing will,

(1) State the time, place and issues to be considered;

(2) Provide names and addresses of participants,

(3) Specify the time limit for participants and others to indicate whether they wish to present views;

(4) Specify the schedule for the filing of written testimony, statements of position, proposed questions for the Presiding Officer to consider, and rebuttal testimony consistent with the schedule provisions of Section 2.1321;

(5) Specify that the oral hearing shall commence within 15 days of the date for submittal of rebuttal testimony unless otherwise ordered;

(6) State any other instructions the Commission deems appropriate;

(7) If so determined by the NRC staff or otherwise directed by the Commission, direct that the staff participate as a party with respect to some or all issues.

(b) If the Commission is not the Presiding Officer, the notice of oral hearing will also state:

(1)When the jurisdiction of the Presiding Officer commences and terminates.

(2)The powers of the Presiding Officer, and

(3)Instructions to the Presiding Officer to certify promptly the completed hearing record to the Commission without a recommended or preliminary decision.

#### 2.1310 -Notice of Hearing Consisting of Written Comments

A notice of hearing consisting of written comments will:

(1)State the issues to be considered;

(2)Provide the names and addresses of participants;

(3)Specify the schedule for the filing of written testimony, statements of position, proposed questions for the Presiding Officer to consider for submission to the other parties, and rebuttal testimony, consistent with the schedule provisions of 2.1321.

(4)State any other instructions the Commission deems appropriate.

#### 2.1311 - Conditions in a Notice or Order

(a) A notice or order granting a hearing or permitting intervention shall (1) restrict irrelevant or duplicative testimony, and (2) require common interests to be represented by a single participant.

(b) If a participant's interests do not extend to all the issues in the hearing, the notice or order may limit her/his participation accordingly.

#### 2.1312 - Authority of the Secretary

The Secretary or the Assistant Secretary may rule on procedural matters relating to proceedings conducted by the Commission itself under this Subpart to the same extent they can do so under 2.772 for proceedings under Subpart G.

#### 2.1313 - Filing and Service

(a) Hearing requests, intervention petitions, answers, replies and accompanying documents must be served as described in paragraph (b) below by delivery, facsimile transmission, e-mail or other means that will ensure receipt by close of business on the due date for filing. Any participant filing hearing requests, intervention petitions, replies and accompanying documents should include information on mail and delivery addresses, e-mail addresses, and facsimile numbers in their initial filings which may be used by the Commission, Presiding Officer and other parties for serving documents on the participant.

(b) All filings must be served upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and participants if any. If service to the Secretary is by delivery or by mail, the filings should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, Attention: Rulemakings and Adjudications Staff. E-mail filings may be sent to the Secretary at the following e-mail address: SECY@nrc.gov. Facsimile transmission filings may be filed with the Secretary using the following number: 301-415-1101.

(c) Service is completed by:

(1)Delivering the paper to the person; or leaving it in her/his office with someone in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the recipient has no office or it is closed, leaving it at her/his usual place of residence with some occupant of suitable age and discretion;

(2)Depositing it in the United States mail, properly stamped and addressed; or

(3)Any other manner authorized by law, when service cannot be made as provided in subparagraphs (1) or (2).

(4)For facsimile transmission, sending copies to the facsimile machine of the person being served;

(5)For e-mail, sending the filing in electronic form attached to an e-mail message directed to the person being served.

(d) Proof of service, stating the name and address of the person served and the manner and date of service, shall be shown, and may be made by-

(1)Written acknowledgment of the person served or an authorized representative; or

(2)The certificate or affidavit of the person making the service.

(e) The Commission may make special provisions for service when circumstances warrant.

#### **2.1314 - Computation of Time**

(a) In computing time, the first day of a designated time period is not included and the last day is included. If the last day is a Saturday, Sunday or legal holiday at the place where the required action is to be accomplished, the time period will end on the next day which is not a Saturday, Sunday or legal holiday.

(b) In time periods of 7 days or less, Saturdays, Sundays and holidays are not counted.

(c) Whenever an action is required within a prescribed period by a paper served pursuant to 2.1307, 3 days shall be added to the prescribed period if service is by mail.

#### **2.1315 - Generic Determination Regarding License Amendments to Reflect Transfers**

(a) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any utilization facility license amendment conforming the license to reflect the transfer action is administrative in nature and involves no significant hazards considerations.

(b) Where administrative license amendments are necessary to reflect an approved transfer, such amendments will be included in the order that approves the transfer. Any challenge to the administrative license amendment is limited to the question of whether the license amendment accurately reflects the approved transfer.

#### **2.1316 - Authority And Role of NRC Staff**

(a) During the pendency of any hearing under this Subpart, consistent with the staff's findings in its Safety Evaluation Report (SER), the staff is expected to promptly issue approval or denial of license transfer requests. Notice of such action shall be promptly transmitted to the Presiding Officer and parties to the proceeding.

(b) Except as otherwise directed in accordance with Section 2.1309(a)(8), the staff is not required to be a party to proceedings under this Subpart but will offer into evidence its SER associated with the transfer application and provide one or more sponsoring witnesses.

(c) If the staff desires to participate as a party, the staff shall notify the Presiding Officer and the parties and shall thereupon be deemed to be a party with all the rights and responsibilities of a party.

#### **2.1317 - Hearing Docket**

For each hearing, the Secretary will, maintain a docket which will include the hearing transcript, exhibits and all papers filed or issued in connection with the hearing. This file will be made available to all parties in accordance with the provisions of Section 2.1303 and will constitute the only discovery in proceedings under this Subpart.

#### **2.1318 - Acceptance of Hearing Documents**

(a) Each document filed or issued must be clearly legible and bear the docket number, license application number, and hearing title.

(b) Each document shall be filed in one original and signed by the participant or its authorized representative, with the address and date of signature indicated. The signature is a representation that the document is submitted with full authority, the person signing knows its contents and that, to the best of their knowledge, the statements made in it are true.

(c) A document not meeting the requirements of this section may be returned with an explanation for nonacceptance and, if so, will not be docketed.

#### **2.1319 - Presiding Officer**

(a) The Commission will ordinarily be the Presiding Officer at a hearing under this part. However, the Commission may provide in a hearing notice that one or more Commissioners, or any other person permitted by law, will preside.

(b) A participant may submit a written motion for the disqualification of any person presiding. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. If the Presiding Officer does not grant the motion or the person does not disqualify himself, the Commission will decide the matter.

(c) If any person presiding deems himself or herself disqualified, he/she shall withdraw by notice on the record after notifying the Commission.

(d) If a Presiding Officer becomes unavailable, the Commission will designate a replacement.

(e) Any motion concerning the designation of a replacement Presiding Officer shall be made within 5 days after the designation.

(f) Unless otherwise ordered by the Commission, the jurisdiction of a Presiding Officer other than the Commission commences as designated in the hearing notice and terminates upon certification of the hearing record to the Commission, or when the Presiding Officer is disqualified.

#### **2.1320 - Responsibility and Power of the Presiding Officer in an Oral Hearing**

(a) The Presiding Officer in any oral hearing shall conduct a fair hearing, develop a record that will contribute to informed decisionmaking, and, within the framework of the Commission's orders, have the power necessary to achieve these ends, including the power to:

- (1) Take action to avoid unnecessary delay and maintain order;
- (2) Dispose of procedural requests;
- (3) Question participants and witnesses, and entertain suggestions as to questions which may be asked of participants and witnesses.
- (4) Order consolidation of participants;
- (5) Establish the order of presentation;
- (6) Hold conferences before or during the hearing;
- (7) Establish time limits;
- (8) Limit the number of witnesses; and
- (9) Strike or reject duplicative or irrelevant presentations.

(b) Where the Commission itself does not preside:

- (1) The Presiding Officer may certify questions or refer rulings to the Commission for decision;
- (2) Any hearing order may be modified by the Commission; and
- (3) The Presiding Officer will certify the completed hearing record to the Commission, which may then issue its decision on the hearing or provide that additional testimony be presented.

#### **2.1321 Participation and Schedule for Submission in a Hearing Consisting of Written Comments**

Unless otherwise limited by this Subpart or by the Commission, participants in a hearing consisting of written comments may submit:

- (1) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials shall be filed within 30 days of the date of the Commission's Notice granting a hearing pursuant to 2.1308(d)(1), unless the Commission or Presiding Officer directs otherwise.
- (2) Written responses and (i) rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants (ii) proposed written questions for the Presiding Officer to consider for submittal to persons sponsoring testimony submitted under Subsection (1). These materials shall be filed within 20 days of the filing of the materials submitted under Subsection (1), unless the Commission or Presiding Officer directs otherwise.
- (3) Written concluding statements of position on the issues. These materials shall be filed within 20 days of the filing of the materials submitted under Subsection (2), unless the Commission or the Presiding Officer Directs otherwise.

#### **2.1322 Participation Schedule for Submissions in an Oral Hearing**

(a) Unless otherwise limited by this Subpart or by the Commission, participants in an oral hearing may submit and sponsor in the hearing:

- (1) Initial written statements of position and written testimony with supporting affidavits on the issues. These materials shall be filed within 30 days of the date of the Commission's notice granting a hearing pursuant to 2.1308(d)(1), unless the Commission or Presiding Officer directs otherwise.
- (2) (i) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants; (ii) proposed questions for the Presiding Officer to consider for propounding to persons sponsoring testimony. These materials shall be filed within 20 days of the filing of the materials submitted under Subsection (1), unless the Commission or Presiding Officer directs otherwise.

(b) The oral hearing should commence within 65 days of the date of the Commission's notice granting a hearing unless the Commission or Presiding Officer directs otherwise. Ordinarily, questioning in the oral hearing will be conducted by the Presiding Officer, using either the Presiding Officer's questions or questions submitted by the participants or a combination of both.

(c) Written post-hearing statements of position on the issues addressed in the oral hearing may be submitted within 20 days of the close of the oral hearing.

(d) The Commission, on its own motion, or in response to a request from a Presiding Officer other than the Commission, may use additional procedures, such as direct and cross-examination, or may convene a formal hearing under Subpart G of 10 C.F.R. Part 2 on specific and substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing. The staff will be a party in any such formal hearing. Neither the Commission nor the Presiding Officer will entertain motions from the parties that request such special procedures or formal hearings.

#### **2.1323 Presentation of Testimony in an Oral Hearing**

(a) All direct testimony in an oral hearing shall be filed no later than 15 days before the hearing or as otherwise ordered or allowed pursuant to the provisions of 2.1322.

- (b) Written testimony will be received into evidence in exhibit form.
- (c) Participants may designate and present their own witnesses to the Presiding Officer.
- (d) Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations for that purpose.
- (e) Participants and witnesses will be questioned orally or in writing and only by the Presiding Officer. Questions may be addressed to individuals or to panels of participants or witnesses.
- (f) The Presiding Officer may accept written testimony from a person unable to appear at the hearing, and may request him or her to respond to questions.
- (g) No subpoenas will be granted at the request of participants for attendance and testimony of participants or witnesses or the production of evidence.

#### **2.1324 - Appearance in an Oral Hearing**

- (a) A participant may appear in a hearing on her/his own behalf or be represented by an authorized representative.
- (b) A person appearing shall file a written notice stating her/his name, address and telephone number, and if an authorized representative, the basis of her/his eligibility and the name and address of the participant on whose behalf she/he appears.
- (c) A person may be excluded from a hearing for disorderly, dilatory or contemptuous conduct, provided he or she is informed of the grounds and given an opportunity to respond.

#### **2.1325 - Motions and Requests**

- (a) Motions and requests shall be addressed to the Presiding Officer, and, if written, also filed with the Secretary and served on other participants.
- (b) Other participants may respond to the motion or request. Responses to written motions or requests shall be filed within 5 days after service unless the Commission or Presiding Officer directs otherwise.
- (c) The Presiding Officer may entertain motions for extension of time and changes in schedule in accordance with subsections (a) and (b) of this section.
- (d) When the Commission does not preside, in response to a motion or request, the Presiding Officer may refer a ruling or certify a question to the Commission for decision and notify the participants.
- (e) Unless otherwise ordered by the Commission, a motion or request, or the certification of a question or referral of a ruling, shall not stay or extend any aspect of the hearing.

#### **2.1326 - Burden of Proof**

The applicant or the proponent of an order has the burden of proof.

#### **2.1327 - Application for a Stay of the Effectiveness of NRC Staff Action on License Transfer**

- (a) Any application for a stay of the effectiveness of the NRC staff's order on the license transfer application shall be filed with the Commission within 5 days of the issuance of the notice of staff action pursuant to 2.1316(a).
- (b) An application for a stay must be no longer than 10 pages, exclusive of affidavits, and must contain:
  - (1) A concise summary of the action which is requested to be stayed; and
  - (2) A concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.
- (c) Within 10 days after service of an application for a stay under this section, any participant may file an answer supporting or opposing the granting of a stay. Answers must be no longer than 10 pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section, as appropriate. No further replies to answers will be entertained.
- (d) In determining whether to grant or deny an application for a stay, the Commission will consider
  - (1) Whether the requestor will be irreparably injured unless a stay is granted;
  - (2) Whether the requestor has made a strong showing that it is likely to prevail on the merits;
  - (3) Whether the granting of a stay would harm other participants; and
  - (4) Where the public interest lies.

#### **2.1328 - Default**

When a participant fails to act within a specified time, the Presiding Officer may consider that participant in default, issue an appropriate ruling and proceed without further notice to the defaulting participant.

#### 2.1329 **Waiver of a Rule or Regulation**

- (a) A participant may petition that a Commission rule or regulation be waived with respect to the license transfer application under consideration.
- (b) The sole ground for a waiver shall be that, because of special circumstances concerning the subject of the hearing, application of a rule or regulation would not serve the purposes for which it was adopted.
- (c) Waiver petitions shall specify why application of the rule or regulation would not serve the purposes for which it was adopted and shall be supported by affidavits to the extent applicable.
- (d) Other participants may, within 10 days, file a response to a waiver petition.
- (e) When the Commission does not preside, the Presiding Officer will certify the waiver petition to the Commission, which, in response, will grant or deny the waiver or direct any further proceedings.

#### 2.1330 - **Reporter and Transcript for an Oral Hearing**

- (a) A reporter designated by the Commission will record an oral hearing and prepare the official hearing transcript.
- (b) Except for any portions that must be protected from disclosure under 10 C.F.R. 2.790, transcripts will be placed in the Public Document Room, and copies may be purchased from the Secretary, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555.
- (c) Corrections of the official transcript may be made only as specified by the Secretary.

#### 2.1331 - **Commission Action**

- (a) Upon completion of a hearing, the Commission will issue a written opinion including its decision on the license transfer application and the reasons for the decision.
- (b) The decision on the application following the hearing will be based on the record developed at hearing.

6. 10 C.F.R. 51. 22(c) by adding a new categorical exclusion as subparagraph number 21 which reads:

10 C.F.R. 51.22 (c)...

(21) Approvals of direct or indirect transfers of any license issued by NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license.

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1. Letter from Chairman Jackson to Senator Murkowski, February 6, 1998, Enclosure 3.
  2. The NRC staff has indicated that, depending on the accuracy and completeness of the application to transfer a license, the staff has typically completed its license transfer review -- primarily involving financial qualifications, decommissioning funding assurance, technical qualifications to operate and attendant environmental assessments -- within about 3 months of receipt of the application.
  3. Further, the Commission has specifically found that the statute does not mandate pre-effectiveness hearings for transfers of NRC licenses, an action which the Commission has noted is not a licensing action" under Section 189.a(1) of the AEA. *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), CLI-92-4, 35 NRC 69, 77 (1992). In this decision, the Commission determined that the consent called for by Section 184 of the AEA was to be granted by order, not by license amendment, though it was recognized that conforming license amendments, of an administrative nature, might also be required to reflect a change in the name of the licensee. 35 NRC at 76-77 and n.6.
  4. Further, the Commission has specifically found that the statute does not mandate pre-effectiveness hearings for transfers of NRC licenses, an action which the Commission has noted is not a licensing action under Section 189.a(1) of the AEA. *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), CLI-92-4, 35 NRC 69, 77 (1992). In this decision, the Commission determined that the consent called for by Section 184 of the AEA was to be granted by order, not by license amendment, though it was recognized that conforming license amendments, of an administrative nature, might also be required to reflect a change in the name of the licensee. 35 NRC at 76-77 and n.6.
  5. *Curators of the University of Missouri*, CLI-95-1, 41 NRC 71, 120 (1995)
  6. *Id.*
  7. *Long Island Lighting Company, supra*, 35 NRC at 77, n. 6.