statement bear the signature of the debtor. Section 1324 of the Food Security Act of 1985 does not require that continuation statements be signed. This rule will make it easier for lenders to file continuation statements because lenders would no longer be required to obtain the signature of the debtor. This rule will also simplify the filing of lien notices by bringing the regulations for central filing systems into conformity with Article 9 of the Uniform Commercial Code, which covers non-farm products.

Comments Received

Only one comment was received in response to the proposed rule. The commenter, an association purporting to represent more than 200 farm credit institutions throughout the United States, fully supported the proposed rule because the change would make it easier—and therefore less costly—for lenders to file continuation statements. The commenter also stated that it would simplify filing of lien notices by bringing the regulations for central filing systems into conformity with the Uniform Commercial Code.

After review of the proposed rule and the comment received, we have determined that the proposed rule as published at 63 FR 31330 will be adopted as the final rule.

Compliance With Regulatory Requirements

As set forth in the proposed rule published at 63 FR 31130, this rulemaking was reviewed under and is issued in conformance with Executive Order 12866, Civil Justice Reform (Executive Order 12778), and Regulatory Flexibility Act and Information Collection requirements. The information collection and recordkeeping requirements for 9 CFR Part 205 have been previously approved by the Office of Management and Budget under control number 0580–0016.

List of Subjects in 9 CFR Part 205

Agriculture, Central filing system.

For reasons set out in the preamble, the Grain Inspection, Packers and Stockyards Administration is amending 9 CFR Part 205 as set forth below.

PART 205—CLEAR TITLE—PROTECTION FOR PURCHASERS OF FARM PRODUCTS

1. The authority citation for Part 205 is revised to read as follows:

Authority: 7 U.S.C. 1631 and 7 CFR 2.22, 2.81.

2. Section 205.209 is amended by revising paragraph (d) to read as follows:

§ 205.209 Amendment or continuation of EFS.

* * * * *

(d) An effective financing statement remains effective for a period of 5 years from the date of filing and may be continued in increments of 5-year periods beyond the initial 5-year filing period by refiling an effective financing statement or by filing a continuation statement within 6 months before expiration of the effective financing statement. A continuation statement may be filed electronically or as a paper document, and need not contain the signature of the debtor.

Dated: November 24, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–32127 Filed 12–2–98; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 51

RIN 3150–AG09

Streamlined Hearing Process for NRC Approval of License Transfers

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to provide specific uniform procedures and rules of practice for handling requests for hearings associated with license transfer applications involving material and reactor licenses as well as licenses issued under the regulations governing the independent storage of spent nuclear fuel and high-level radioactive waste. Conforming amendments are also made to certain other parts of the Commission's regulations. These new provisions provide for public participation and opportunity for an informal hearing on matters relating to license transfers, specify procedures for filing and docketing applications for license transfers, and assign appropriate authorities for issuance of administrative amendments to reflect approved license transfers. This rulemaking also adds a categorical exclusion that permits processing of transfer applications without preparation of Environmental Assessments.

EFFECTIVE DATE: December 3, 1998.

FOR FURTHER INFORMATION CONTACT: James A. Fitzgerald, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–1607, e-mail *JAF@nrc.gov*, or Leo Slaggie, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–1605 (TDD), e-mail *ELS@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On September 11, 1998 (63 FR 48644), the NRC published in the **Federal Register** a proposed rule that would amend NRC's regulations by adding to 10 CFR Part 2, the NRC's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, a subpart M, which would establish uniform informal procedures for handling requests for hearings associated with license transfer applications. This initiative is part of a broad effort to improve the effectiveness of the agency's programs and processes.

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, the Commission expects this high rate of requests for approval of license transfers to continue. Because of the need for expeditious decisionmaking from all agencies, including the Commission, for these kinds of transactions, timely and effective resolution of requests for transfers on the part of the Commission is essential.

In general, license transfers do not involve any technical changes to plant operations. Rather, they 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 CFR 30.34 (b), 40.46, 50.80, 72.50)

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 NRC 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 consent to a license transfer, past Commission practice has generally involved the use of formal hearing procedures under the provisions of 10 CFR Part 2, Subpart G, for license transfers other than those for materials licenses, which have used the informal hearing procedures provided by 10 CFR Part 2, Subpart L. However, license transfers do not, as a general proposition, involve the type of technical issues with immediate impact on the actual operation of the facilities that might benefit from review by a multi-member, multi-disciplined Atomic Safety and Licensing Board historically used by the Commission in hearings on initial licensing or license amendments that substantially affect the technical operations. It is a matter suitable for reasonable discussion whether such complex hearing procedures provide the best means of reaching decisions on such technical issues, but, be they the best or not, they clearly are not required and are not the most efficient means for resolving the issues encountered in license transfers. Accordingly, the Commission has determined that requests for hearings on applications for license transfers should be handled by a separate Subpart of 10 CFR Part 2. This new Subpart M establishes an efficient and appropriate informal 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 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(1).)

The Commission believes that 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 reviewing court held that Section 189.a of the Atomic Energy Act did not require that a hearing on a materials license amendment be conducted ''on the record.'' *City of West Chicago* v. *U.S. Nuclear Regulatory Commission*, 701 F.2d 632, 641–45 (7th Cir. 1983). There, the court declined to read Section 189.a as requiring formal trial-type 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 also taken the position in court that Section 189.a does not require 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). However, the court did not find it necessary to decide the question. *Nuclear Information Resource Services* v. *NRC*, 969 F.2d 1169, 1180 (D.C. Cir. 1992).

To promote uniformity, the hearing procedures established in the final rule apply to all license transfers which require prior NRC approval. The Commission has added to the final rule, as appropriate, additional language to make explicit that the new procedures apply to transfers of licenses issued under 10 CFR Part 72 for independent storage of spent nuclear fuel and high level radioactive waste. 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.

II. Comments and Commission Responses

The Commission received sixteen letters of comment from interested persons. Commenters included private corporations who hold or plan to acquire NRC licenses for nuclear facilities, the Nuclear Energy Institute, private counsel representing electric utilities and nuclear plant operating companies, a licensed nuclear power plant operator employed at a nuclear power station, the president of Local 369 of the Utility Workers Union of America representing workers at a nuclear power station, a citizens group, and an individual member of the public. Twelve of the Commenters expressed strong support for the proposed rule and provided specific comments and suggestions on particular provisions. Two Commenters, the individual member of the public and the citizens group, indicated strong but general opposition to the proposed Subpart M hearing process.

A review of the comments, not necessarily in the order received, and the Commission's responses follows:

Comments from individuals:

Comment 1. Mr. Marvin Lewis, a member of the public, opposed the adoption of informal procedures for hearings on license transfer applications. Mr. Lewis's brief comment expressed concern that under the proposed procedures there will be no record upon which findings of fact and conclusions of law may rest and that ''general findings'' will suffice to support a license transfer.

Commission response. The Commission believes the commenter has not fully understood the proposal. While the procedures do not allow discovery as such, there will be an extensive record consisting of the hearing transcript, exhibits, and all papers filed or issued in connection with the hearing. See § 2.1317. The Presiding Officer will certify the completed hearing record to the Commission, which will then issue its decision on the issues raised in the hearing or request additional testimony and/or documentary evidence if it finds that additional evidentiary presentations are needed for a decision on the merits. See § 2.1320. The Commission does not understand Mr. Lewis's reference to ''general findings'' in the context of this rulemaking. Before approving a license transfer the Commission must find that the transfer is in accordance with the provisions of

the Atomic Energy Act (42 U.S.C. 2234). This finding will necessarily address the specifics of the transfer in question. Nothing in the rule alters the nature of the findings needed to support approval of a license transfer.

Comment 2. The Ohio Citizens for Responsible Energy (''OCRE'') generally opposed the proposed rule. OCRE characterizes the Subpart M informal procedures as ''a pro forma exercise'' that in OCRE's view will not be adequate to deal with the complex inquiry that could arise in a license transfer proceeding. OCRE also objects to shortened filing times and to the requirement that common interests be represented by a single party. OCRE sees such provisions as ''attempts to make life difficult for intervenors.''

Commission response. For the reasons given in the notice of proposed rulemaking, the Commission believes that the Subpart M procedures will be both efficient and effective in dealing with the issues that license transfer application proceedings typically involve. They are not ''pro forma'' but in fact provide ample opportunity for the parties to raise appropriate issues and build a sound evidentiary record for decision. At the same time, the Commission recognizes that issues might arise that could require additional procedures. Therefore the rule explicitly provides that the Commission may use additional procedures or even convene a formal hearing ''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.'' See § 2.1322(d). The rule thus provides sufficient flexibility to cope with extraordinary or unusual cases. For typical cases, however, a ''streamlined hearing process'' providing faster decision-making without loss of quality is a desirable objective. The shortened filing times and other provisions to which OCRE objects are steps which make this streamlining possible. They are not selective attempts to burden intervenors. The Commission believes that all parties to a license transfer application proceeding will benefit from the use of the Subpart M procedures.

Comment 3. Mr. David Leonardi, a licensed reactor operator, submitted a two-part comment ''directed more to what is missing in the proposed rule rather than to what it contains.'' First, Mr. Leonardi questioned the Commission's statement in the notice of proposed rulemaking that license transfers in general ''do not involve . . . significant changes in personnel of consequence to the continued reasonable assurance of public health and safety.'' Mr. Leonardi called this ''a dangerous assumption'' and expressed his view that ''significant losses of critical personnel must be anticipated and factored into the transfer decision.'' He suggested that the proposed rule ''must require the applicant to submit a critical staff retention plan.''

Second, with regard to the placement in the Public Document Room of documents pertaining to each license transfer application, § 2.1303, Mr. Leonardi commented that he finds the Public Document Room difficult to use. He indicated his preference for ''a separate section on the NRC web site for each proposed license transfer where all relevant documents and correspondence may be accessed.''

Commission response. Mr. Leonardi is correct that if a significant loss and replacement of critical plant personnel can be anticipated as the result of a particular license transfer this might well be a reason not to approve the transfer or to condition the transfer on the maintenance of adequate technical qualifications. However, the Commission does not regard this observation as a reason for modifying this proposed rule, which deals with hearing procedures rather than with the substantive findings that must be made to support approval of a license transfer application. The commenter does not assert that the Subpart M procedures cannot deal adequately with the issue of technical qualifications of the applicant for license transfer, and the Commission perceives no potential inadequacy in this regard. The Commission continues to believe that personnel retention issues and technical qualifications of the applicant do not involve the type of technical questions bearing on the actual operation of a facility that may benefit from different hearing procedures. As for the commenter's suggestion that the rule should incorporate a requirement for a critical staff retention plan to be submitted by the applicant for the license transfer, the Commission finds that Subpart M, which deals primarily with hearing procedures, is not an appropriate place for such a substantive requirement. If, in a particular license transfer case, a need is identified for submission of a critical staff retention plan in order to address the applicant's technical qualifications, this matter can readily be addressed in the hearing process and can ultimately result in a condition on license transfer approval.

Turning to the matter of availability of license transfer application documents on the NRC web site, the Commission notes that the NRC is in the process of developing a new and comprehensive Agencywide Documents Access and Management System (''ADAMS''). Documents filed in a license transfer case after ADAMS becomes operational, probably in the second half of 1999, will be placed in the ADAMS public library. The public will be able to find relevant documents by using general search criteria such as docket numbers, case names, and subject topics. The details of how ADAMS will operate have yet to be fully worked out, but the Commission believes that this system will prove responsive to the commenter's concern. In the meantime, the Commission notes that the NRC Public Document Room licensing files have worked quite well in the past and been readily available to members of the public who wish to obtain extensive information on pending licensing actions.

Comment 4. A comment by the president of Local 369, Utility Workers Union of America, representing 197 workers at a nuclear power station, acknowledged the need to streamline the hearing process but identified what the commenter perceived as potential problems with the proposed Subpart M procedures. In particular, the commenter was concerned about the Commission's expectation that the procedures will result in the issuance of a final Commission decision on a license transfer application within about six to eight months of notice of receipt of the application. The commenter said that ''a process that proceeds too rapidly could compromise the Union's and the NRC's ability to obtain critical information about the license transferee.'' The Commission of course agrees that what the commenter calls ''a rush to approval'' could fail to obtain adequate information about the transferee's experience and ability to manage the plant safely. The Commission notes, however, that the expectation of completing license transfer proceedings in six to eight months applies to ''routine cases.'' (63 FR 48646, col. 2.) Subpart M itself does not specify or limit the substantive questions which must be addressed in license transfer proceedings. If difficult issues arise in unusual cases, they will be dealt with as sound decisionmaking requires, even if this requires a greater time commitment than routine cases. The Commission's aim in adopting the Subpart M procedures is to provide an efficient and effective hearing process and a structure for compiling a decision record in a timely manner, not a hurried one.

The commenter also expressed concern that the Union not be denied the opportunity to participate in license transfer hearings. The new Subpart M

does not alter the Commission's usual requirement for standing to intervene in a proceeding that a person show an interest which may be affected by the outcome of the proceeding. By showing an interest (within the ''zone of interests'' of the relevant statutes) which may be affected by the Commission's action on an application for license transfer, any person or organization may participate as of right. See § 2.1306(a). Under current agency case law, the Commission may also allow discretionary intervention to a person who does not meet standing requirements, where there is reason to believe the person's participation will make a valuable contribution to the proceeding and where a consideration of the other criteria on discretionary intervention shows that such intervention is warranted.

Comments by or on behalf of members of the nuclear energy industry:

Comment 5. The Nuclear Energy Institute (''NEI''), an organization representing utilities licensed to operate commercial nuclear power plants in the United States, nuclear materials licensees, and other organizations and individuals involved in the nuclear industry, submitted a comment on behalf of its members. NEI supports as a ''very positive development'' the use of informal rather than formal trial-type procedures for consideration of license transfer applications. NEI suggests the goals of the rule can be furthered by the following proposed clarification: ''Where the proposed change only involves a transfer of ownership of all or a portion of the facility, both NRC staff review and the Subpart M proceeding should be limited solely to the capability of the transferee to meet financial qualifications and decommissioning funding requirements.'' Several comments by individual members of the nuclear energy industry or their representatives endorsed the comments of NEI.

Commission response. The Commission does not accept NEI's proposed clarification. The Commission observed in the Notice of Proposed Rulemaking that ''*typical* staff review consists largely of assuring that the ultimately licensed entity has the capability to meet financial qualification and decommissioning funding aspects of NRC regulations,'' (63 FR 48644, col. 3. (emphasis added)). But financial qualification and decommissioning funding are not the sole issues that may bear on a license transfer approval, even when the transfer will change only the ownership of all or part of a facility and will not directly affect management or operation. Section 103d of the Atomic Energy Act, 42 U.S.C. 2133, for example, places certain restrictions on foreign ownership, control, or domination of certain licenses. Consideration of the question whether a proposed license transfer is consistent with this provision of the Act would require a broader scope for the proceeding than the limited one NEI recommends. Generally, the Commission believes it is desirable to focus its Subpart M rulemaking solely on procedures rather than attempting in this rulemaking to describe and enumerate the substantive issues that license transfers may involve.

Comment 6. The Southern California Edison Company (''SCE'') stated its strong support for the proposed rule. SCE supported the comments submitted by the Nuclear Energy Institute, which the Commission has already addressed in the response to Comment 5, *supra.* SCE also offered suggestions for ''minor enhancements'' to the proposed rule, which the Commission addresses in its response to this comment.

Commission response. Change (1) suggested by SCE is that the rule should give the Presiding Officer, in addition to the power to ''strike or reject duplicative or irrelevant presentations,'' § 2.1320(a)(9), the responsibility and power to strike or reject unreliable or immaterial presentations. As the commenter points out, this change would make Subpart M similar in this regard to 10 CFR Part 2, Subpart L, Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings, which gives the presiding officer the power to strike portions of a presentation that are ''cumulative, irrelevant, immaterial, or unreliable.'' (10 CFR 2.1233(e)). The Commission agrees that unreliable and immaterial presentations detract from the value of the record and should be subject to exclusion in the sound discretion of the Presiding Officer. Therefore the Commission accepts this suggestion and has revised § 2.1320(a)(9) accordingly in the final rule.

Change (2) suggested by SCE deals with responses to papers served by mail. SCE notes that proposed § 2.1314(c) provides for three additional days to respond to papers served pursuant to § 2.1307 by regular mail. SCE suggests that three additional days for mail service should be allowed for all responses to service of a paper, not just those made pursuant to § 2.1307. The Commission accepts this suggestion and has revised § 2.1314(c) accordingly in the final rule.

Change (3) suggested by SCE is that proposed § 2.1331(b) be clarified to make plain that the Commission may consider other information on the docket when it decides matters that were not designated as issues for the hearing. The Commission agrees and has adopted the language proposed by SCE for § 2.1331(b) in the final rule: ''The decision on issues designated for hearing pursuant to § 2.1308(d)(1) will be based on the record developed at the hearing.''

Comment 7. Florida Power & Light Company (''FPL'') submitted a comment endorsing the comments of the Nuclear Energy Institute, which the Commission has already addressed in the context of its response to comment 5, *supra.* FPL concurred with the Commission's findings in support of the proposed Subpart M and offered the following additional suggestions:

(1) FPL suggested that the Commission should extend the informal hearing process to all NRC adjudicatory proceedings.

Commission response. Although the suggestion goes well beyond the scope of the proposed rule, the Commission notes elsewhere in this notice that it has argued in court that section 189a of the Atomic Energy Act does not require formal hearings, and the Commission has directed the staff to seek legislation that supports greater use of informal procedures. The Commission has also asked the staff to advise the Commission on ways to enhance the Commission's ability to use informal procedures in any proceeding in which formal procedures are currently used.

(2) FPL supported close Commission oversight of the Presiding Officer but believed that the Commissioners should not personally be involved, as the proposed Subpart M envisions, in developing the evidentiary record in license transfer application proceedings.

Commission response. Under the proposed rule the Commission ''will ordinarily be the Presiding Officer at a hearing,'' but the Commission ''may provide * * * that one or more Commissioners, or any other person permitted by law, may preside.'' See § 2.1319. The Commission believes this language provides sufficient flexibility to deal with the commenter's concerns, should the Commission perceive that its direct involvement in Subpart M hearings is in some cases unduly burdensome or impractical for the Commission.

(3) FPL stated its belief that allowing all parties to make oral presentations in every license transfer proceeding ''could defeat the underlying purpose of the proposed rule: to streamline license transfer proceedings.'' Comments by several other members of the nuclear

energy industry or their representatives questioned the proposed rule's provision that hearings shall be oral unless all parties agree to a hearing on written submissions. These Commenters recognized the Commission's intention to avoid delays caused by a need to consider a party's request that a hearing be oral; that is, the Commission intends to avoid needless nonsubstantive ''litigation'' over the form (oral or written) of the litigation on the merits—but noted that there are alternative ways to avoid these delays. Two Commenters suggested that the Commission could provide that hearings will be on written submissions unless any party requests an oral hearing.

Commission response. Under the proposed Subpart M oral hearings are the ''default choice'' in that it provides for oral presentations unless all parties agree to a written hearing. Under the proposed scheme if the parties take no action the hearing will be oral, and only unanimous action of the parties in favor of a written hearing will cause oral procedures to be supplanted. The Commenters' suggested alternative that the hearing be written unless a party requests an oral hearing would turn this around and make a written hearing the default choice. The Commission prefers to retain the approach taken in the proposed rule. The Commission believes that oral presentations with the structure established by Subpart M may allow for the compilation of a better record because the Presiding Officer can more readily ask follow-up or clarifying questions. A strictly written hearing is likely to prove more cumbersome in this regard. Furthermore, members of the public attending oral proceedings will be able to follow the hearing more readily than by combing through extensive written materials in the Public Document Room as they would be required to do in a written hearing context. Accordingly, the Commission does not accept the commenter's proposed alternative.

(4) FPL noted its support of Commission action to ensure timely completion of license transfer proceedings but recommended ''that the final rule specifically require automatic Commission review in the event that any of the schedular ''milestones'' are exceeded by a Presiding Officer.''

Commission response. Although the Commission intends to monitor these proceedings carefully and will be fully prepared to step in to address schedular problems when necessary, the Commission is not prepared to require by regulation, and bind itself to, a review of every instance in which a Presiding Officer exercises discretion to enlarge the time provided in the rule for filings or other actions. In view of the Commission's recent Policy Statement on Conduct of Adjudicatory Proceedings, 48 NRC 18 (1998), (63 FR 41872; August 5, 1998), the Commission is confident that persons serving as Presiding Officers will be highly sensitive to the need for expeditious completion of adjudicatory proceedings, consistent with considerations of fairness and the production of an adequate record, and will countenance delays only for compelling reasons. The Commission of course retains discretion to take such action in individual proceedings as it deems necessary to assure timeliness and adherence to all other Commission requirements that govern the hearing process.

Comment 8. Texas Utilities Electric Company (''TU Electric'') expressed support for the proposed rule. TU Electric also offered many of the suggestions put forward in the comments already described. In addition, TU Electric expressed concern that the reference in proposed § 2.1330(b) to 10 CFR 2.790, which is in Subpart G, might convey an implication that other Subpart G procedures also apply in Subpart M proceedings.

Commission response. To allay the commenter's concern, the Commission has modified § 2.1330(b) in the final rule by replacing the language ''under 10 CFR 2.790'' with the language ''in accordance with law and policy as reflected in 10 CFR 2.790 . . .'' The intent of this modification is to remove any possible implication that Subpart G is intended to apply to license transfer actions.

Comment 9. AmerGen Energy Company, LLC (''AmerGen'') commented that it favored the proposed rule and urged its prompt adoption. AmerGen also suggested that the Commission should apply the proposed Subpart M procedures, at the request of an applicant, in any license transfer application proceedings that may be undertaken before the final Subpart M becomes effective. In AmerGen's opinion, the NRC has authority under the Atomic Energy Act and the Administrative Procedure Act to use the Subpart M procedures on a case-by-case basis, prior to finalization of the rule, so long as the Commission provides fair notice to the potential parties.

Commission response. For reasons discussed elsewhere in this notice, the Commission is making this rule effective upon publication, pursuant to the provisions of the Administrative Procedure Act for immediate effectiveness. 5 U.S.C. 553(d)(1) and 553(d)(3). Any applications received but not yet noticed as of the effective date of this rule will be subject to Subpart M procedures. In the case of license transfer applications, if any, that have been noticed and for which proceedings are pending as of the date of this notice of final rulemaking, affected applicants or parties to such proceedings who wish to avail themselves of the new procedures may file motions with the Presiding Officer in those proceedings, requesting that Subpart M procedures be applied as appropriate to the remainder of the pending proceeding.

Comment 10. Morgan, Lewis, & Bockius, a private law firm commenting on behalf of Alliant Utilities—IES Utilities and STP Nuclear Operating Company, endorsed the comments of NEI (*see* Comment 5, *supra*) in support of the rule. The commenter also made several suggestions for changes.

Commission response. The changes suggested by this commenter are similar to suggestions made in other comments described and responded to in the preceding discussion.

Comment 11. Shaw, Pittman, Potts & Trowbridge (''Shaw Pittman''), a private law firm commenting on behalf of itself and several utilities, strongly supported the proposed rule. Shaw Pittman believed, however, that several aspects of the rule require ''clarification and refinement.'' These aspects, together with the Commission's response, are as follows:

(1) Shaw Pittman expressed concern ''that the rule does not identify the circumstances that would permit the NRC Staff to delay the approval or denial of a license transfer request pending any requested hearing.'' The commenter noted that proposed § 2.1316(a) says that during the pendency of a hearing under Subpart M ''the staff is expected to promptly issue approval or denial of license transfer requests.'' The commenter believed that the final rule or its statement of consideration ''should describe the circumstances or the factors that the NRC Staff are to consider in deciding whether to postpone approval or denial of a transfer pending a requested hearing.''

Commission response. The Commission does not accept this suggestion. As noted previously (*see* response to Comment 5), the scope and focus of the Subpart M rulemaking are on procedures for the conduct of hearings, rather than the substantive questions involved in approval of license transfer applications. The Commission is confident that the present language of § 2.1316(a) adequately conveys to the NRC staff that staff action on license transfer requests

should not be delayed except for sound reasons. The Commission relies on the staff, subject to Commission oversight, to exercise good judgment in this regard. As the rule indicates, the Commission believes that staff approval or denial can usually be issued promptly, but it would be unwise for the Commission at this point to attempt to anticipate all the circumstances that might warrant delay in the staff's review or action on the application.

(2) Shaw Pittman commented that the Commission ''should clarify the evidentiary value of written position statements and oral presentations allowed under the present rule.'' The commenter would have the rule specify that the Commission cannot base a decision on ''written position statements and oral presentations, in and of themselves.'' The commenter would require parties to document and support their positions by written testimony with supporting affidavits.

Commission response. The Commission does not believe that extensive clarification is necessary. Setting out evidentiary requirements in more detail could be at variance with the Commission's intention to move away from time-consuming formality in its hearing processes. In making a decision based on the record produced in a Subpart M proceeding, the Commission will of course take proper account of the evidentiary value of the record material. Written statements of position and oral arguments will be treated as such statements and arguments are treated in the NRC's formal adjudications under Subpart G and informal proceedings under Subpart L, *i.e.* as arguments and positions of the parties but not as facts. Factual assertions unsupported by affidavits, expert testimony, or other appropriate evidentiary submissions are less likely to carry weight than assertions with proper evidentiary support.

(3) Shaw Pittman urged the Commission to revise the proposed rule expressly to allow parties to submit proposed questions to the Presiding Officer within seven days of the filing of rebuttal testimony. The commenter noted that under the proposed rule, rebuttal testimony and proposed questions for the Presiding officer to ask witnesses in the Presiding Officer's examination are to be filed at the same time. *See* § 2.1321(b) and § 2.1322(a)(2). Thus, there is no explicit provision for proposing questions directed to the rebuttal testimony itself, although the Presiding Officer has the discretion to provide for such questions. The commenter believed that the timeframe of the rule would reasonably allow for this additional filing without extending the date for commencement of the oral hearing beyond 65 days after the date of the Commission's notice granting a hearing.

Commission response. The Commission finds the commenter's point well-taken and has placed language in the final rule to authorize proposed questions directed to rebuttal testimony to be filed within seven days of the filing of the rebuttal testimony.

(4) Shaw Pittman finds confusing the language of proposed 10 CFR 2.1323(a) that ''[a]ll direct testimony in an oral hearing shall be filed no later than 15 days before the hearing.* * *'' The commenter believes this language ''could arguably be read to allow the filing of direct testimony subsequent to the 30 day deadline provided for by proposed 10 CFR 2.1322(a)(1).''

Commission response. The Commission does not see any reason for confusion. To be timely the filings in question must be made within 30 days after the date of the Commission's notice granting a hearing [§ 2.1322(a)] but in any event no later than 15 days before the hearing [§ 2.1323(a)]. There is no potential contradiction between the two provisions. Rather than being an unnecessary provision, as the commenter asserts, § 2.1323(a) assures that parties will receive filings in adequate time to prepare for the oral hearing.

(5) Shaw-Pittman asked that the Commission clarify in its promulgation of the final rule the extent to which license transfer applications filed before the effective date of the rule will be subject to the new Subpart M procedures. The commenter favored making the new rule immediately effective and applying the Subpart M procedures to pending applications.

Commission response. See the Commission's response to Comment 9.

Comment 12. GPU Nuclear stated its strong support for the rule and recommended that the new procedures be applied as soon as possible.

Commission response. See the Commission's response to Comment 9.

Comment 13. Duke Energy Company (''Duke''), represented by Winston & Strawn, supported the proposed rule but expressed concern about the elimination of cross-examination by parties under Subpart M. Duke stated that ''the final rule should retain provisions allowing the parties to present recommended questions to the presiding officer.'' Duke commented that the final rule ''should define with greater precision the types of issues appropriate for review * * *'' and suggested limiting the proceedings to issues associated with financial qualifications and decommissioning funding. Duke also commented that the final rule should explicitly grant parties to a contested license transfer hearing the right to appeal an adverse decision by the Commission. Duke suggested that the informal, legislative-style hearing process should be extended to other NRC adjudicatory proceedings.

Commission response. The proposed Subpart M rule provides for parties to submit proposed questions to the Presiding Officer. This will allow the parties to suggest what they believe to be appropriate questions for the witnesses but will allow the Presiding Officer better control of the examination of witnesses. This provision should effectively eliminate the need for objections and interruptions during witness examination. For these reasons the Commission has retained the proposed procedure in the final rule. The Commission rejects the commenter's suggestion that the rule should define and limit the issues appropriate for review, for reasons already discussed in previous responses to similar comments. The Commission also sees no point in addressing statutory appeal rights in the final rule. A party's right to judicial review of an adverse decision is set out in Section 189b. of the Atomic Energy Act in conjunction with Chapter 158 of title 28, United States Code, and the Administrative Procedure Act. Extension of the proposed procedures for license transfer applications to other types of NRC proceedings is beyond the scope of this rulemaking, but, as noted in more detail in response to an earlier comment, the Commission is taking steps to expand the use of similar procedures in other proceedings.

Comment 14. PECO Nuclear noted its view that the proposed rule is ''a positive step.'' The commenter suggested several minor changes in words and punctuation needed to clarify the text of the rule.

Commission response. The Commission has incorporated in the final rule the commenter's suggested minor changes, which do not affect the substance of the rule.

Comment 15. Wisconsin Electric Power Company supported the Commission's proposed rule and suggested certain ''clarifications and refinements.''

Commission response. The commenter's suggestions do not differ in substance from suggestions made by other commenters that the Commission has responded to above.

Other Comments.

Members of the NRC staff in Office of Nuclear Materials Safety and Safeguards submitted a comment asking that it be made clear that the proposed Subpart M applies to license transfers under 10 CFR Part 72 and that applications for transfers under Part 72 be noticed in the **Federal Register** pursuant to § 2.1301(b).

Commission response. The proposed rules were intended to apply to all license transfer applications, including those filed under Part 72. To make this clear, the Commission has included explicit references to Part 72 in this statement of consideration for the final rule. The Commission has also modified § 2.1301(b) to list transfer applications under Part 72 as one of the class of applications that will be noticed in the **Federal Register**.

III. Description of Final Rule

The procedures adopted in this rulemaking cover any direct or indirect license 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 includes 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 required only 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 procedures, similar to those used by the Commission in cases involving export licensing hearings under 10 CFR Part 110, provide for an informal type hearing for license transfers. These procedures 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 NRC 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 NRC 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 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 in 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,[1] intervenors can and do introduce the issue of whether to have oral presentations in individual proceedings. Rather than have the issue of oral presentations become a point of contention in individual proceedings (which could introduce unnecessary delays in completing the record) the rule resolves this concern by ensuring that all parties have the opportunity to present oral testimony. The question of whether cross examination of witnesses should be allowed has also led to arguments in Subpart L proceedings.[2] The Commission has addressed this area of potential dispute by providing in Subpart M for questioning of witnesses only by the Presiding Officer. Although only the Presiding Officer may question witnesses, the rule specifically provides 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, CLI–98–12 (63 FR 41872; August 5, 1998).

Finally, to improve the efficiency of the adjudicatory process the rule imposes 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 procedures 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. The hearing will 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 references 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

[1] Curators of the University of Missouri, CLI–95–1, 41 NRC 71 120 (1995).

[2] Id.

transfer itself may only be considered using the procedures in this 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 new regulations provide that conforming amendments to the license may be issued by the NRC 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, NRC 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 CFR 50.58(b)(5), 50.91 and 50.92, and 72.46 and 72.50, 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'' or a ''genuine issue consideration,'' respectively, 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 NRC staff has completed many 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.[3] Accordingly, the Commission has determined that a new categorical exclusion should be added to 10 CFR Part 51 which will obviate the need for the NRC 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 that 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 in Parts 50 and 72, including the requirement for individualized findings under 10 CFR 50.58, 50.91 and 50.92 that address the necessity for pre-effectiveness hearings.

Basis for Immediate Effectiveness

The Commission has determined that this rule should become immediately effective upon publication. The Administrative Procedure Act relieves the agency of the requirement that publication of a substantive rule be made not less than thirty days before its effective date in the case of ''a substantive rule which...relieves a restriction'' or ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(1) and 553(d)(3). The purpose of the thirty-day waiting period ''is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *F.C.C.*, 78 F. 3d 620 (D.C. Cir. 1996). The rule deals primarily with procedures that will be used in future hearings on applications for license transfers. The rule adds no burden to the conduct of activities regulated by the NRC. Thus there is no need for NRC licensees or anyone else ''to adjust their behavior'' to achieve compliance with the rule. Moreover, comments by persons most likely to be affected by the rule (potential applicants) appear to favor the rule and its prompt implementation. The Commission therefore finds there is good cause to make this rule immediately effective. Alternatively, the Commission notes that the rule in effect ''relieves a restriction'' in that the hearing process established by Subpart M should be less burdensome for parties to license transfer proceedings than the procedures which the Commission has previously by practice applied. Thus the Commission's decision to dispense with the thirty day waiting period is also supported by 5 U.S.C. 553(d)(1) .

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 CFR Part 51, that this rule falls within the categorical exclusion appearing at 10 CFR 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 finds that the approval of a direct or indirect license transfer, as well as any required administrative license amendments to reflect the approved transfer, comprises 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.

Environment 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 final rule does 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 CFR Part 2,

[3] Long Island Lighting Company, supra, 35 NRC at 77, n. 6.

Subpart G or L as appropriate and applicable environmental review requirements of 10 CFR Part 51.

Paperwork Reduction Act Statement

The 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.). Existing requirements for 10 CFR Part 51 were approved by the Office of Management and Budget, approval number 3150–0021.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

To determine whether the amendments to 10 CFR Part 2 contained in this final 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 past practice which generally involved 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 CFR 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 parties' responses 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 CFR 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 CFR 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.

4. Use of a New Subpart M for all License Transfers

In the case of license transfer applications the Commission is concerned with only one type of approval, so 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 Subpart M 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 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 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 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 decisonmaking or the rights of all parties 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.

5. Conclusion.

Based on the foregoing considerations, the Commission has decided to adopt Subpart M and the attendant conforming amendments to provide the procedures for actions on license transfer applications. This constitutes the NRC's regulatory analysis.

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 have a significant economic impact on a substantial number of small entities. This 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 CFR Part 121 or in the size standards adopted by the NRC (10 CFR 2.810). 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 businesses.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109 and 72.62, 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 either 10 CFR 50.109 or 72.62. The rule does not constitute a backfit under either of these sections 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 under Part 50 or 72.

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.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

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 Nuclear Regulatory Commission is adopting the following amendments to 10 CFR Parts 2 and 51:

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. 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 § 2.101, paragraph (a)(1) is revised to read as follows:

§ 2.101 Filing of application.

(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 NRC staff prior to the filing of an application.

* * * * *

3. In § 2.1103, after the final sentence the following sentence is added to read as follows:

§ 2.1103 Scope.

* * * This subpart shall not apply to proceedings on applications for transfer of a license issued under Part 72 of this chapter. Subpart M of this part applies to license transfer proceedings.

4. In § 2.1201, paragraph (a)(1) is revised to read as follows:

§ 2.1201 Scope of subpart.

(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 a license amendment related to an application to transfer a license; or

* * * * *

5. In § 2.1205, paragraphs (a) and (b) are revised to read as follows:

§ 2.1205 Request for a hearing: petition for leave to intervene.

(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 the hearing within the time specified in § 2.103 in all cases. An applicant may include in the request for hearing a request that the presiding officer recommend to the Commission that procedures other than those authorized under this subpart be used in the proceeding, provided that the applicant identifies the special factual circumstances or issues which support the use of other procedures.

* * * * *

6. In Part 2, a new Subpart M is added to read as follows:

Subpart M—Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications.

Sec.

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 transfers.
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.

Subpart M—Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications.

§ 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 10 CFR part 50 and part 52 licenses, major fuel cycle facility licenses issued under part 70, or part 72 licenses. 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, DC 20555–0001.

§ 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 § 2.1301.

§ 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 NRC staff Safety Evaluation Report (SER).

(e) Any NRC 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, DC 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 service of that answer.

(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 an order granting the request for license transfer 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 petitioner's 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 the extent it pertains solely to matters outside its jurisdiction.

(d)(1) After consideration of the factors covered by paragraphs (a) through (c) of this section, 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 § 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;

(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:

(a) State the issues to be considered;

(b) Provide the names and addresses of participants;

(c) 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.

(d) 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) of this section 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, DC 20555–0001; the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; 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, DC 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 or 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 or 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 paragraphs (c)(1) or (2) of this section.

(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 following service of a paper, 3 days shall be added to the prescribed period if service is by regular 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 amendment to the license of a utilization facility or the license of an Independent Spent Fuel Storage Installation which does no more than conform the license to reflect the transfer action, involves respectively, ''no significant hazards consideration'' or ''no generic issue as to whether the health and safety of the public will be significantly affected.''

(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 NRC 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 § 2.1309(a)(7), the NRC 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 NRC 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 § 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 and the Presiding Officer or such other person is not the Commission or a Commissioner, the Commission will decide the matter.

(c) If any person presiding deems himself or herself disqualified, he or 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, unreliable, immaterial, 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:

(a) 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.

(b) Written responses, rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants, and proposed written questions for the Presiding Officer to consider for

submittal to persons sponsoring testimony submitted under paragraph (a) of this section. These materials shall to filed within 20 days of the filing of the materials submitted under paragraph (a) of this section, unless the Commission or Presiding Officer directs otherwise. Proposed written questions directed to rebuttal testimony for the Presiding Officer to consider for submittal to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(c) Written concluding statements of position on the issues. These materials shall be filed within 20 days of the filing of the materials submitted under paragraph (b) of this section, unless the Commission or the Presiding Officer directs otherwise.

§ 2.1322 Participation and 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 hearings:

(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.

(3) These materials must be filed within 20 days of the filing of the materials submitted under paragraph (a)(1) of this section, unless the Commission or Presiding Officer directs otherwise.

(4) Proposed questions directed to rebuttal testimony for the Presiding Officer to consider for propounding to persons offering such testimony shall be filed within 7 days of the filing of the rebuttal testimony.

(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 this part 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 or his own behalf or be represented by an authorized representative.

(b) A person appearing shall file a written notice stating her or his name, address and telephone number, and if an authorized representative, the basis of her or his eligibility and the name and address of the participant on whose behalf she or 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 paragraphs (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 in accordance with law and policy as reflected in 10 CFR 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, DC 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 issues designated for hearing pursuant to § 2.1308 will be based on the record developed at hearing.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

7. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Section 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 10141). Section 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134).

8. In § 51.22, a new paragraph (c)(21) is added to read as follows:

§ 51.22 Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.

* * * * *

(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.

* * * * *

Dated at Rockville, Maryland, this 27th day of November 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–32211 Filed 12–2–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–23–AD; Amendment 39–10915; AD 98–24–28]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company 250–B and 250–C Series Turboshaft and Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Allison Engine Company 250–B and 250–C series turboshaft and turboprop engines, that requires replacing existing beryllium copper main fuel control (MFC) bellows assemblies with Inconel 718 stainless steel welded MFC bellows assemblies. This amendment is prompted by reports of leaking MFC bellows assemblies resulting in an uncommanded minimum fuel flow condition, loss of engine fuel flow control and subsequent forced landing. The actions specified by this AD are intended to prevent MFC bellows assembly leakage, which can result in an uncommanded minimum fuel flow condition and subsequent loss of engine fuel flow control.

DATES: Effective January 7, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 7, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Allison Engine Company, P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2350 E. Devon Avenue, Room 323, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Allison Engine Company 250–B and 250–C series turboshaft engines was published in the **Federal Register** on June 8, 1998 (63 FR 31138). That action proposed to require replacing the existing beryllium copper main fuel control (MFC) bellows assemblies at the next repair or overhaul of the MFC bellows assembly, or, since corrosion was a factor, by the calendar end-dates specified, whichever occurs first. Since that issuance of that proposal, the FAA has discovered that the turboprop aircraft were inadvertently omitted from the