[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 2, 51, 52, and 54**

**[NRC-2025-1501]**

**RIN 3150-AL58**

**Streamlining Contested Adjudications in Licensing Proceedings**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC, agency, or Commission) is proposing to revise the agency's rules of practice and procedure to streamline contested adjudications in NRC licensing proceedings in response to the Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act) and Executive Order 14300, Ordering the Reform of the Nuclear Regulatory Commission.

**DATES:** Submit comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of comments received before this date.

**ADDRESSES:** Submit your comments, identified by Docket ID NRC-2025-1501, at https://www.regulations.gov. If your material cannot be submitted using https://www.regulations.gov, call or email the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously.

Follow the search instructions on https://www.regulations.gov to view public comments.

You can read a plain language description of this proposed rule at https://www.regulations.gov/docket/NRC-2025-1501. For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Michael Spencer, Office of the General Counsel, telephone: 301-287-9115; email: Michael.Spencer@nrc.gov staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

A. Need for the Regulatory Action

The Accelerating Deployment of Versatile, Advanced Nuclear for Clean Energy Act of 2024 (ADVANCE Act) was signed into law in July of 2024. The ADVANCE Act establishes requirements to enhance the NRC's timeliness and efficiency, including a broad requirement for efficiency through an updated Mission Statement.[1] One provision specifically addresses the hearing process, requiring the NRC (for certain combined license applications) to among other things, complete "any necessary public licensing hearings and related processes" not later than 2 years after docketing the application.

Subsequently, in May of 2025, the President directed a series of reforms to improve the agency's efficiency and effectiveness in Executive Order (E.O.) 14300, "Ordering the Reform of the Nuclear Regulatory Commission."[2] As relevant to this proposed rule, Section 5(j) of E.O. 14300 directs the NRC to streamline its public

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[1] ADVANCE Act of 2024, Pub. L. No. 118-67, div. B, §§ 206, 207, 501, 504, 505, 506 (2024). For example, Section 506 requires the NRC to periodically improve its performance metrics and milestone schedules for completing safety evaluations "to provide the most efficient metrics and schedules reasonably achievable."

[2] Executive Order No. 14300, "Ordering the Reform of the Nuclear Regulatory Commission," 90 FR 22587 (dated May 23, 2025; published May 29, 2025).

hearing process. Relatedly, E.O. 14300 Section 5(a) directs the NRC to establish fixed deadlines for its evaluation and approval of specified licensing actions and requests, Section 5(d) directs the NRC to establish an expedited approval pathway for reactor designs tested and demonstrated by the Department of Defense (also referred to as the Department of War)[3] or the Department of Energy (DOE), and Section 5(e) directs the NRC to "[e]stablish a process for high-volume licensing of microreactors and modular reactors[.]"

In response to Congressional and Executive action, the NRC has developed this proposed rule focused on streamlining the agency's rules of practice and procedure. The proposed changes to the contested hearing process would reduce burden, increase clarity, and promote efficiencies in line with the deadlines established in accordance with the ADVANCE Act and E.O. 14300.

B. Major Provisions

Major provisions of this proposed rule include the following:

- Revisions to the contested hearing process that would enable the NRC to generally complete adjudications within 8 to 14 months or faster for expedited proceedings
- A requirement for evidentiary hearings to begin as soon as practicable upon admission of contentions
- Strict deadlines for the completion of hearings
- A revised process where participants would provide more information on the merits of proposed contentions in their initial filings to accelerate decision-making
- A reduction in discovery burden on all parties to reflect the greater availability of information due to technological developments

[3] The Department of Defense (DOD) was authorized to use the secondary title, the Department of War (DOW), in September 2025 by Executive Order. *See* Executive Order No. 14347, "Restoring the United States Department of War," 90 FR 43893 (dated September 5, 2025; published September 10, 2025).

- Revisions to accelerate Commission review of appeals
- Elimination, refinement, or addition of provisions that would accommodate the schedule directives of the ADVANCE Act and E.O. 14300.

C. Costs and Benefits

This proposed rule is considered to be a deregulatory action and would reduce burden for both the government and hearing participants by streamlining contested hearing proceedings. Over the 5-year analysis period (2026-2030), the proposed revisions to contested hearings are projected to yield savings for the public, the industry, and government. The combined net savings would generate cumulative undiscounted savings of $51.7 million. Using 2024 as the base year, the net present value (NPV) of these net savings is $46.0 million, discounted at 3 percent, or $39.6 million, discounted at 7 percent. The projected annualized cost savings would be $9.8 million discounted at 3 percent, or $9.0 million discounted at 7 percent. These values represent net savings, as implementation costs are expected to be minimal.

For more information, please see the regulatory analysis included later in this notice.

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## I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2025-1501 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to https://www.regulations.gov and search for Docket ID NRC-2025-1501.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at https://www.nrc.gov/reading-rm/adams.html. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.
- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (https://www.regulations.gov). Please include Docket ID NRC-2025-1501 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at https://www.regulations.gov as well as enter the comment submissions into ADAMS. The NRC does not routinely

edit comment submissions to remove identifying or contact information. If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission

On May 23, 2025, President Donald J. Trump signed Executive Order (E.O.) 14300, "Ordering the Reform of the Nuclear Regulatory Commission." Section 5, "Reforming and Modernizing the NRC's Regulations," requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents as guided by the policies set forth in section 2 of the E.O. This rulemaking addresses section 5(j), which requires the NRC to "Streamline the public hearings process," and also supports meeting the objectives of sections 5(a), 5(d), and 5(e) of E.O. 14300, as discussed below.

## III. Background

Since its inception, the Commission has periodically taken steps to assess and improve the efficiency of its adjudicatory process, as discussed in a 2004 rule (69 FR 2182, pages 2182 through 2186; January 14, 2004) (hereinafter "2004 Adjudications Rule"). Generally, these reforms have yielded less formal adjudications intended to reduce the burden of litigation costs for all parties and remove procedural mechanisms that are not essential to developing an adequate hearing record. The Commission last finalized a major reformation of its hearing processes in 2004 in anticipation of a significant volume of new proceedings to consider applications for new facilities, to renew operating licenses, to reflect restructuring in the electric utility industry, and to license waste storage facilities.

The Commission now expects a similar increase in licensing applications in coming years; and Congress and the President have directed the NRC to prepare to review and process these applications as expeditiously as possible. In 2024, Congress passed the ADVANCE Act, which established requirements to enhance the NRC's timeliness and efficiency that the NRC's licensing and regulation of the civilian use of radioactive materials and nuclear energy be conducted in a manner that is efficient and does not unnecessarily limit—(1) the civilian use of radioactive materials and deployment of nuclear energy; or (2) the benefits of civilian use of radioactive materials and nuclear energy technology to society. Further, section 207(c) of the ADVANCE Act specifically addresses the hearing process, requiring the NRC (for certain combined license applications) to (1) complete safety and environmental reviews not later than 18 months of docketing, (2) complete "any necessary public licensing hearings and related processes" not later than 2 years after docketing, and (3) make a final decision on whether to issue the combined license not later than 25 months after docketing.[4]

Building on the ADVANCE Act, the President signed E.O. 14300 "Ordering the Reform of the Nuclear Regulatory Commission," on May 23, 2025 (90 FR 22587; May 29, 2025). Section 3 of E.O. 14300 directs the NRC to consider the benefits of increased availability of, and innovation in, nuclear power to the nation's economic and national security in addition to safety, health, and environmental considerations, when the NRC carries out its licensing and related regulatory functions. In furtherance of the President's directive, E.O. 14300 tasks the NRC with streamlining its licensing and public hearing process. As relevant here, section 5 of E.O. 14300 directs the NRC, to work with its Department of Government Efficiency (DOGE) Team, the Office of Management and Budget (OMB), and other executive departments and agencies as appropriate, to undertake a review and wholesale revision of its regulations and guidance documents.

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[4] This expedited process applies to applicants for combined licenses who meet certain requirements regarding, among other things, the use of previously approved designs on existing commercial reactor sites (or on substantially similar sites adjacent thereto), as described in § 207(b).

Section 5 establishes specific tasks this effort must encompass, including streamlining the public hearings process, as directed by section 5(j).

Relatedly, Section 5(a) of the E.O. directs the NRC to establish fixed deadlines for its evaluation and approval of specified licensing actions and other requests from a licensee or potential licensee rather than nonbinding generic milestone schedule guidelines. These deadlines include taking no more than 18 months to make a final decision on an application to construct and operate a new reactor of any type and taking no more than 1 year to make a final decision on an application to continue operating an existing reactor of any type. Section 5(a) also requires the NRC to adopt shorter deadlines tailored to particular reactor types or licensing pathways as appropriate. Because the timeframes in E.O. 14300 are shorter than those in the ADVANCE Act, meeting the timeframes in E.O. 14300 will generally also ensure compliance with the ADVANCE Act. In addition, section 5(e) of the E.O. directs the NRC to establish a process for high-volume licensing of microreactors and modular reactors, and section 5(d) of the E.O. directs the NRC to establish an expedited pathway to approve reactor designs that the DOW or the DOE have tested and that have demonstrated the ability to function safely.

In some cases, completing licensing decisions within the E.O.-directed timeframes will turn on timely completion of a contested adjudication. However, the Commission’s current hearing procedures in 10 CFR part 2 provide deadlines and milestones that would collectively exceed the timeframes specified in E.O. 14300 in most cases by a significant margin. 10 CFR part 2, appendix B, “Model Milestones.” And experience has shown that these milestones, which are not binding, are sometimes substantially exceeded in practice. Therefore, the Commission proposes to revise its hearing procedures to support faster adjudications that will enable the agency to meet the licensing timelines contemplated by the ADVANCE Act and E.O. 14300. Based on past experience, the NRC believes that the proposed adjudicatory deadlines would provide reasonable timeframes for parties to meaningfully raise, and the presiding officer

to resolve, disputed issues. These revisions would continue the overall trend, described previously, of reducing the formality in NRC adjudications to enhance efficiency.

The NRC's predecessor agency, the Atomic Energy Commission, at one time believed that the Atomic Energy Act of 1954, as amended (AEA), required formal adjudicatory hearings in all cases (2004 Adjudications Rule, 69 FR 2182, page 2183; January 14, 2004). Now the prevailing view is that, with the exception of hearings on applications for licenses to construct and operate uranium enrichment facilities, informal hearings will also satisfy the AEA. (2004 Adjudications Rule, 69 FR 2182, pages 2183 through 2186; January 14, 2004). On balance, these amendments would generally use simpler, more informal processes and shorter schedules to complete adjudications within the timeframes contemplated in the ADVANCE Act and E.O. 14300.

The Commission has chosen to use a Licensing Board as the default presiding officer for contested licensing proceedings, including license transfers, because Boards are independent and statutorily established, possess legal and technical expertise, and are well placed to efficiently conduct NRC licensing proceedings given their experience and ability to focus exclusively on adjudicatory matters. Considering the wide variety of situations a Board could face after a contention is admitted, the presiding officer would have considerable flexibility to select the appropriate procedures for resolving disputed issues within strict timeframes proposed by this rulemaking. For example, these proposed procedures would continue to rely primarily on written pleadings and statements to maintain clarity and precision in the record, although the presiding officer would have the flexibility to convene oral proceedings when necessary.

These revisions would frontload the hearing process by generally requiring parties to provide more information on the merits of proposed contentions when filing their initial pleadings and would then require evidentiary hearings on any admitted contentions to be held as soon as practicable thereafter. To support more efficient and timely resolution of admitted contentions in certain circumstances, the procedures would still provide for motions to dismiss contentions prior to an evidentiary hearing.

These proposed procedures would also address new or amended contentions filed later in the NRC's review process to ensure that the NRC is still able to complete adjudications in a timely manner. The Commission proposes three significant revisions to accomplish this goal.

First, in light of the dynamic nature of our licensing process, parties frequently file new or amended contentions throughout NRC adjudications, often in response to amended applications or other new information. To accommodate these filings within the necessary E.O. 14300 timelines, the proposed revisions would establish deadlines the presiding officer must use in setting hearing schedules that will provide sufficient time to (1) fully litigate an initial round of contentions (including an evidentiary hearing on any admitted contentions) and (2) fully litigate a second round of contentions through an evidentiary hearing on those contentions, even if there is no overlap between the rounds of litigation.

Second, the Commission recognizes that, in rare instances critical issues could arise sufficiently late in a proceeding to challenge the E.O. 14300 timelines for a decision on the application. To ensure that only critical issues have the potential to be admitted late in the proceeding, these revisions would establish a Standard Record Closure Date, which would generally be the date the presiding officer would be expected to enter an initial decision after an evidentiary hearing on the first round of contentions, assuming that the evidentiary hearing phase immediately commences upon the admission of the contention. Contentions filed after the Standard Record Closure Date would need to additionally meet the agency's standards for reopening the record, which will ensure those contentions raise critical issues.

Third, to avoid the prospect of parties filing contentions very late in a proceeding that would potentially delay licensing, these revisions would establish that new or amended contentions would not be considered pending before the agency until the presiding officer finds there is good cause for submitting these contentions after the prescribed initial filing deadline for contentions (i.e., that they have been timely submitted

based on new, materially different information). This proposal would, as discussed later in this notice, eliminate the possibility of parties delaying licensing in certain proceedings simply by filing a new or amended contention.

As stated previously, the Commission proposes to establish hearing schedules that would allow for two non-overlapping hearings to be conducted within the 18-month and 1-year E.O. 14300 timelines; one hearing for contentions submitted by the initial filing deadline for contentions and a second hearing held thereafter on a new or amended contention arising later in the review. The revisions to part 2 primarily accomplish this acceleration by requiring the presiding officer to commence the evidentiary hearing as soon as practicable after admitting contentions. In contrast, evidentiary hearings generally do not begin under the current rules until after the staff completes its review. This proposal also reflects the Commission's understanding that the E.O.'s discussion of fixed deadlines for the NRC's evaluation and approval to support a final decision on the application refers to the agency's approval of the licensing action or other request if the NRC's evaluation determines that pertinent requirements are met. Given this understanding, the changes in this proposed rule focus on ensuring that there is a final presiding officer decision on all contested issues within the E.O. 14300 timelines as these decisions have immediate effect by default, regardless of the pendency of appeals. As such, the presiding officer's decision would allow the licensing decision to be made even in circumstances where the AEA requires a hearing to be completed before the issuance and effectiveness of a license. Consequently, in this proposed rule, the appeals process occurs outside of the scope of the fixed deadlines outlined in Section 5(a) of Executive Order 14300. Nonetheless, the NRC proposes to streamline the appeals process to support the overarching goals of the ADVANCE Act and E.O. 14300. The revisions to part 2 would accomplish this by making small changes to the filing deadlines for appeals and establishing standard milestones for

issuance of final Commission decisions on appeals. As a result, in many (if not most) cases, the appeals process would also be completed within the E.O.-directed 18-month or 1-year timelines.

Finally, while the Commission expects these revisions would substantially improve the efficiency of NRC contested licensing adjudications, they would not constitute a wholesale rewrite of part 2, and many proceedings such as enforcement proceedings, proceedings on denials of applications, or proceedings for construction or operation of a high-level waste geological repository would only be minimally impacted. Proceedings under 10 CFR 52.103 would also be minimally impacted by the proposed changes because the procedures for such hearings are established by case-specific order, and the NRC will consider modifications to the existing standard procedures for these proceedings in a separate process. Further, separate from this proposed rule, the NRC is also considering potential changes to the agency's mandatory hearing process to further increase efficiency and support meeting the deadlines in the ADVANCE Act and E.O. 14300. Relatedly, under a separate proposed rule, the NRC also intends to consider potential changes to the agency's implementation of the National Environmental Policy Act (NEPA), which, among other changes, could impact the scope of issues that may be permissible for adjudication in contested hearings. The changes proposed in this rule are a series of targeted amendments intended to ensure timely and efficient contested adjudication for most NRC licensing actions.

## IV. Discussion

To achieve the objectives described previously, the Commission proposes to amend 10 CFR part 2 in the following areas:

### Changes to Definitions in 10 CFR 2.4

The NRC proposes changes to four of the definitions in 10 CFR 2.4. Proposed revisions to the definitions of "contested proceeding" and "potential party" are related to matters discussed in more detail later in this notice. The NRC proposes to modify the definition of "contested proceeding" to conform to proposed changes to 10 CFR 2.309(c)

regarding motions for leave to file hearing requests, intervention petitions, and contentions after the deadline established for such submissions (collectively “challenges after the deadline”), in particular to reflect that until the motion for leave to file is granted upon a showing of good cause, the challenge after the deadline would not be considered pending before the NRC. Nonetheless, while the motion is pending before the NRC, it would still be considered within the scope of the contested proceeding since the purpose of the motion is to seek permission to file a challenge after the deadline to contest the application. The NRC also proposes to revise the definition of “potential party” by removing references to subpart M of part 2, which currently governs proceedings on license transfer applications. Many recent license transfer applications raise technical issues on decommissioning the Commission did not intend subpart M to address. Therefore, the NRC proposes to eliminate subpart M and conduct license transfer proceedings under the more general subpart L.

The NRC proposes to add a new definition of “highly expedited proceeding” to reflect proposed changes elsewhere in part 2 (in § 2.309, § 2.323, and subpart L) that would apply shorter timeframes to filings and decisions in proceedings that need to be conducted on an even more expedited basis than the other reviews the NRC would typically handle. As reflected in the standard schedules on the NRC website at https://www.nrc.gov/about-nrc/generic-schedules.html, the NRC currently intends to apply an 18-month or 12-month review schedule to most types of applications it receives. However, some applications would have a significantly shorter anticipated review schedule. For example, measurement uncertainty recapture uprate license amendments currently have a 6-month review schedule, and amendments adopting a Technical Specifications Task Force traveler using the Consolidated Line-Item Improvement Process currently have a 7-month review schedule. The NRC proposes to include these two types of applications within the definition of “highly expedited proceeding” to reflect the shorter review schedules and focused natures of these reviews.

The NRC might designate other types of applications as highly expedited proceedings. For example, in accordance with E.O. 14300 section 5(e), the NRC intends to conduct a rulemaking to establish a process for high-volume licensing of microreactors and modular reactors. As part of that rulemaking, the NRC might include certain applications under E.O. 14300 section 5(e) within the definition of "highly expedited proceeding." Independent of the NRC's efforts pursuant to E.O. 14300 section 5(e), the NRC might later decide to include an application or a class of applications within the scope of "highly expedited proceedings." To provide flexibility and otherwise account for potential changes to NRC review schedules and processes over time, the proposed definition of "highly expedited proceeding" would include any proceeding that the Commission designates as a highly expedited proceeding; such designations could be done outside a rulemaking process.

Finally, the NRC also proposes to add a new definition of "Standard Record Closure Date" to 10 CFR 2.4 to support proposed changes elsewhere in this notice regarding standards and schedules for filing challenges after the deadline later in the proceeding. As discussed later, the NRC considers it appropriate to apply the reopening criteria and an expedited evidentiary schedule to such challenges if the associated contention is admitted for hearing. The NRC proposes to apply these provisions after the point in the proceeding in which the NRC could have completed an evidentiary hearing in the hypothetical situation where a contention filed by the deadline for contentions in 10 CFR 2.309(b) is both admitted for hearing and proceeds to an evidentiary hearing immediately after the admission of the contention, consistent with the NRC's proposed policy of holding evidentiary hearings as early as practicable. This point of the proceeding would be termed the Standard Record Closure Date because the record of the proceeding would be closed with respect to the introduction of new or amended contentions into the proceeding. Because the proposed regulations define the time in which (1) contentions, answers, and replies are to be filed, (2) when decisions on contention admissibility are due, and (3) when initial decisions after an evidentiary

hearing are to be issued, the NRC is able to compute the Standard Record Closure Date for different types of proceedings, and the NRC proposes to include the Standard Record Closure Dates for these proceedings in proposed 10 CFR 2.1207 and in *Federal Register* notices announcing an opportunity to request a hearing, as discussed later in this notice. The proposed definition of "Standard Record Closure Date" in 10 CFR 2.4 would define how the date is calculated, consistent with the description in this paragraph.

**Representation by Those Who Are Not Attorneys**

The NRC proposes to revise 10 CFR 2.314(b) to eliminate representation of partnerships, corporations, unincorporated associations, and other persons by those who are not attorneys. Currently, § 2.314(b) allows a duly authorized member or officer (even if not an attorney) to represent a partnership, corporation, or unincorporated association. The NRC also allows state and local government bodies to be represented by duly authorized persons who are not attorneys, as discussed in a 2007 denial of a petition for rulemaking (72 FR 73676; December 28, 2007). However, as explained in the following paragraphs, such representation is not required by law and is not consistent with the timeliness or efficiency objectives of the ADVANCE Act and E.O. 14300. With the proposed changes, only an individual would be allowed to appear on his or her own behalf.

Federal agencies are not required by law to allow representation by non-attorneys in their adjudicatory proceedings. For example, 5 U.S.C. 500 states that a person before an agency may be represented by an attorney in good standing with a State bar but also provides that this statutory provision does not (for most agencies, including the NRC) grant or deny the right of a non-attorney to appear for or represent a person before an agency. Similarly, the Administrative Procedure Act (APA) provision on representation, 5 U.S.C. 555(b), states that it does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

In addition, participants in NRC proceedings need to diligently adhere to the NRC's hearing requirements to meet the timeliness and efficiency goals in the ADVANCE Act and E.O. 14300. Successfully navigating the NRC's hearing process necessitates substantial legal knowledge and skill, particularly given the accelerated schedules proposed in this rule. Although less formal than a federal court trial, NRC proceedings employ processes common in trials (like standing, motions, disclosures, evidentiary standards, testimony, proposed findings of fact and conclusions of law, stay requests, and appeals). Also, the meaning of many terms in the NRC's hearing regulations are established by case law. In these ways, the NRC's hearing process shares features with federal court proceedings, where a non-attorney individual may appear on his or her own behalf but may not represent other individuals or entities. It has been recognized that non-attorney representation might be inappropriate for "highly technical" disputes requiring "specialized knowledge."[5]

These concerns are not merely theoretical. Experience has shown that in many NRC proceedings, non-attorney representatives have demonstrated a lack of understanding of the NRC's procedural requirements, made arguments that are not cognizable in the hearing process, submitted procedurally impermissible filings, and failed to clearly articulate claims. The time and resources needed to address such issues are not consistent with timely and efficient adjudicatory proceedings that are necessary to meet the objectives of the ADVANCE Act and EO 14300. Limiting representation to attorneys should lead to clearer, more professional, and more procedurally compliant filings that will help support the NRC's timeliness and efficiency goals.

For these reasons, the NRC proposes to revise § 2.314(b) to provide that only individuals may appear on their own behalf and that all other "persons" (a term that is broadly defined in 10 CFR 2.4) may be represented only by an attorney-at-law. As a conforming change, the NRC proposes to revise the last sentence of 10 CFR 2.314(b) to

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[5] See page 71 of the 2019 report "Federal Administrative Adjudication Outside the Administrative Procedure Act" prepared by Michael Asimow for the Administrative Conference of the United States.

eliminate discussion of matters related solely to representation by those other than attorneys.

Consistent with federal court practice, the NRC's regulations would continue to allow individuals to appear on their own behalf, even if they are not attorneys. As discussed in a 2020 decision in the Vogtle proceeding (CLI-20-6, 91 NRC 225), the Commission has given greater latitude to hearing requests submitted by non-attorney intervenors while acknowledging that non-attorney petitioners are still expected to comply with our procedural rules.

**Requirements for Publication of *Federal Register* Notices Announcing an Opportunity to Request a Hearing, Petition to Intervene, and/or File Contentions**

The NRC proposes several changes to the regulations in 10 CFR 2.101, 2.104, and 2.105 regarding the publication of *Federal Register* notices announcing an opportunity to request a hearing, petition to intervene, and/or file contentions. First, the NRC proposes to generally notice these hearing opportunities as early as practicable. The hearing process may not reasonably be initiated before the NRC staff accepts the application for review (i.e., dockets the application), but noticing the hearing opportunity as early as practicable thereafter would accelerate issue identification and resolution and could help mitigate any unavoidable delays that may occur later (e.g., from illness of counsel or a witness). For certain proceedings, 10 CFR 2.104(a) already requires the staff to issue the hearing notice "as soon as practicable after the NRC has docketed the application." With one exception, the NRC proposes changes to 10 CFR 2.104 and 2.105 to expand this requirement to publish notices as soon as practicable to other *Federal Register* notices announcing a hearing opportunity in order to accelerate the initiation of the adjudicatory process, with a conforming change to 10 CFR 2.101(f)(5). The exception pertains to notices of proposed action subject to the requirements of 10 CFR 50.91. Notices under 10 CFR 50.91 are for proposed amendments to specified production and utilization facility licenses, which are generally published on a monthly basis given their volume. Given the high volume, it would not be practical to publish

individual *Federal Register* notices subject to 10 CFR 50.91 for the subject licensing actions. Also, only a small number of these amendments are challenged in the hearing process, and the associated licensing actions may be taken during the pendency of a hearing if the NRC makes a final no significant hazards consideration determination.

Second, the NRC proposes to modify 10 CFR 2.104 and 2.105 to provide that *Federal Register* notices announcing a hearing opportunity must provide additional clarity by stating the Standard Record Closure Date specified in 10 CFR 2.1207 and the additional filing deadline information required by 10 CFR 2.309(b)(5). The basis for this change is described later in this notice in the context of proposed changes to 10 CFR 2.309 requirements for hearing requests, intervention petitions, and contentions.

**Good Cause for Extensions of Time**

Meeting the licensing deadlines contemplated in the ADVANCE Act and E.O. 14300 will require strict adherence to the schedules described in the rule. 10 CFR 2.307 currently provides that the time periods in part 2 may be extended upon a showing of good cause. However, in recent years the NRC has frequently granted extensions based on ordinary circumstances, such as the complexity of reactor licensing applications or parties' litigation obligations in other proceedings, as in a June 29, 2018, Order of the Secretary in the Turkey Point proceeding (ML18180A185).

To ensure that extension requests do not undermine timely adjudications, the NRC proposes to further define good cause in § 2.307. Because good cause is necessarily context specific, the revisions would cover two circumstances. First, as the Commission has previously explained in a 2012 rule (77 FR 46562; August 3, 2012), good cause in the context of § 2.307 should constitute "extraordinary" events that are not within the parties' control, such as sickness or weather. Major holidays could similarly be an extraordinary circumstance. Thus, in normal circumstances the presiding officer should only grant an extension when a circumstance outside of the ordinary occurs that is not brought on by the movant's actions or inactions.

Second, with the ADVANCE Act and Executive Order 14300, efficient and timely decision-making on license applications is a key focus area for the agency. Therefore, in circumstances when an extension request has the demonstrated potential to delay an entire adjudicatory proceeding past the NRC staff's scheduled date to complete its review, then the extension request would be required to meet a higher standard. In those circumstances, the presiding officer would only grant the extension upon finding unavoidable and extreme circumstances. While reviewing courts have determined that this is a reasonable extension of the good cause standard, *National Whistleblower Center v. Nuclear Regulatory Commission*, 208 F.3d 256, 262-63 (D.C. Cir. 2000), the NRC has not regularly applied this standard in recent years. The application of this standard should ensure that the presiding officer only extends deadlines that could challenge the overall schedule for an adjudication in response to rare, unforeseeable, and serious events. For example, a presiding officer in the McGuire/Catawba proceeding (LBP-01-31, 54 NRC 242) previously found unavoidable and extreme circumstances justified extending the time to file hearing requests when security information was unavailable shortly after the terrorist attacks of September 11, 2001.

Finally, to ensure that extension requests do not undermine the NRC's timeliness goals for adjudication, the presiding officer should only grant the extension request for the minimum amount of time necessary to accommodate the circumstances giving rise to good cause.

**Requirements for Hearing Requests, Intervention Petitions, and Contentions**

The NRC proposes to revise its regulations for hearing requests, intervention petitions, and contentions to (1) eliminate discretionary intervention, (2) refine but not raise the contention admissibility criteria, (3) account for the NRC's proposal for most licensing proceedings, in which more information on the merits of proposed contentions would be provided in the litigants' initial filings (contention submissions, answers, and replies), (4) accelerate filing and decision deadlines consistent with the ADVANCE Act and E.O. 14300, and (5) clarify and strengthen the requirements for hearing requests,

intervention petitions, and new or amended contentions filed after the deadline in 10 CFR 2.309(b) (i.e., “challenges after the deadline”).

An underlying theme for several of these proposed changes is that the NRC proposes to take a more tailored approach to timeframes for initial filings and decisions thereon to account for specific types of applications rather than the more one-size-fits-all approach in the current regulations, where the same time is provided for contentions on shorter or simpler applications as on longer or more complex applications. The proposed timeframes would provide sufficient time for parties to meaningfully raise disputed issues in the type of proceeding at issue and for the presiding officer to determine whether the standing and contention requirements are met. Using more tailored hearing timelines is consistent with direction in NEIMA section 102(c), ADVANCE Act section 504, and E.O. 14300 section 5 regarding specified timelines for different types of NRC reviews. To do this, the NRC proposes to establish several basic timeframes for different types of proceedings so that the NRC’s hearing regulations are clear and manageable and provide greater flexibility, while recognizing that it would be impractical to establish a multitude of timeframes for every type of proceeding and constantly modify hearing processes and regulations to account for the different NRC decision-making schedules as they are updated over time. In addition, as discussed later, the NRC proposes to require the presiding officer in each proceeding to establish a hearing schedule that, to the greatest extent practicable, will not extend past the NRC staff’s scheduled date for completing its review of the application. This provision could, for example, address an expedited NRC review under E.O. 14300 section 5(d) of a reactor design tested and demonstrated by DOE or DOW.

For clarity, the NRC proposes to add a new § 2.309(b)(5) (with cross-references in §§ 2.104 and 2.105) requiring *Federal Register* notices announcing an opportunity for hearing to specify the applicable filing deadlines for hearing requests, intervention petitions, and contentions (including those filed after the § 2.309(b)(1)-(b)(3) deadlines), and the applicable deadlines for the associated answers and replies. These notices

would also be required to specify the Standard Record Closure Date for the proceeding, which would be important information for application of the proposed revision of the reopening requirements in § 2.326 and certain proposed scheduling provisions in subpart L, as explained later in this notice.

The NRC proposes to revise 10 CFR 2.309 to eliminate discretionary intervention because (a) the NRC is not required to grant party status to those who do not demonstrate standing since the mandated hearing opportunity in AEA section 189a. is for "any person whose interest may be affected" and the NRC has historically required a showing of standing to demonstrate the requisite interest,[6] (b) discretionary intervention has rarely been allowed in practice,[7] and (c) spending time and resources assessing discretionary intervention requests is not conducive to meeting the efficiency and timeliness goals of the ADVANCE Act and E.O. 14300.

The NRC also proposes to refine the contention admissibility criteria in two ways. First, the NRC proposes to augment the requirement in § 2.309(f)(1)(iv) to demonstrate that a contention is material by requiring the petitioner to specify the legal requirement on which the contention is based. Specifying the pertinent legal requirement is important for demonstrating the materiality of the contention, and clarity in this regard can avoid needless confusion about the legal basis for a contention (e.g., safety versus environmental requirements) and the inefficiencies that accompany efforts to resolve such confusion. Second, the NRC proposes revising § 2.309(f)(1)(vi) to require the petitioner to clearly indicate whether a contention is one of omission or adequacy.

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[6] The Commission explained this historical approach in a 2020 decision in the Bellefonte proceeding (CLI-20-16, 92 NRC 511).

[7] The NRC has identified two proceedings in which Licensing Boards have granted discretionary intervention since the last major reform of the NRC's hearing process in 2004. In a 2009 decision in the High-Level Waste Repository proceeding (LBP-09-6, 69 NRC 367), the Licensing Board found that the Nuclear Energy Institute had met the discretionary intervention factors but had also established standing; hence granting discretionary intervention made no difference in that case. In the Andrew Siemaszko enforcement proceeding, the Licensing Board's granting of discretionary intervention was overturned by the Commission on appeal in a 2006 decision (CLI-06-16, 63 NRC 708). Further, in this 2006 decision, the Commission stated the NRC had not granted a request for discretionary intervention in the previous dozen years. Thus, the availability of discretionary intervention has made little practical difference in the last three decades of NRC adjudicatory practice.

Different requirements apply to contentions of omission versus contentions of adequacy, and a lack of clarity regarding the nature of the contention requires additional resources from the NRC staff, applicant, and presiding officer to cover all the bases.

The NRC also proposes to revise § 2.309 to reflect a proposal to modify the content and schedule for litigants' initial filings in proceedings for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits (except for a high-level waste repository proceeding under part 2, subpart J; a proceeding for granting a license to construct and operate a uranium enrichment facility; or a proceeding on a denial of an application). Under this proposal, standing would be assessed separately from contention admissibility, and more information on the merits of contentions would be provided in the litigants' initial filings on contentions (i.e., proposed contentions, answers, and replies) in order to more expeditiously resolve contentions and avoid protracted evidentiary hearings. The following changes would be made to § 2.309 for the identified licensing proceedings:[8]

- A hearing request would be granted if the requestor shows standing, and contention admissibility would be assessed separately in a parallel but less accelerated process. If a petitioner's hearing request is granted, the presiding officer would then determine whether the petitioner's proposed contentions are admissible. If a petitioner's hearing request is denied, the petitioner's proposed contentions would not be further addressed in the adjudicatory proceeding. Because a hearing request would be required only to show standing, an expedited schedule is proposed for hearing requests and associated filings and decisions. By accelerating filings and decisions on standing, the participants and presiding officer could save resources litigating contentions in proceedings where standing has not been demonstrated.[9] Hearing requests would be

[8] The following changes would not apply, however, to the three types of proceedings identified as exceptions earlier in this paragraph.

[9] However, any resource savings would be limited somewhat because litigation of contentions would proceed in parallel with litigation of standing, albeit on a longer schedule. Based on the proposed schedules, in cases where the presiding officer determines that standing has not been shown, there may be resource savings associated with the filings of answers and replies on

due within 30 days of the *Federal Register* notice announcing the hearing opportunity, except for license transfers, where the existing 20-day period would be retained.[10] In most proceedings, answers to hearing requests would be due within 10 days of the hearing request, replies would be due within 7 days of the service of answers, and the presiding officer's decision would be due within 20 days of the filing of replies. However, no reply would be permitted in highly expedited proceedings because there is no statutory right to file a reply to an answer to a hearing request, and the prohibition on replies to answers in highly expedited proceedings is consistent with the existing prohibition in § 2.309(i)(2) on replies to answers in proceedings under 10 CFR 52.103, which are highly expedited proceedings on whether acceptance criteria in the inspections, tests, analyses, and acceptance criteria (ITAAC) in combined licenses are met.

- The NRC also proposes to accelerate the consideration of the merits of proposed contentions. Under the current process, the initial filings and decision on proposed contentions are focused on identifying issues where an "inquiry in depth" is appropriate,[11] which would occur during a later, more involved evidentiary hearing process that has historically taken substantial time and resources to complete. These initial filings and the associated contention admissibility decision also involve a great deal of time and effort, and it could be more efficient to use this phase of the proceeding for a more in-depth exploration of the contested issues up front, which should better focus an evidentiary hearing, if one is held. Therefore, for proceedings involving the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits (except for a high-level waste repository proceeding under part 2, subpart J; a

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contentions, oral argument on contentions (if held), and presiding officer decisions on contentions.

[10] A 30-day period would be used for highly expedited proceedings on license and license amendment applications for production and utilization facilities under AEA sections 103 and 104b. and on testing facilities under AEA section 104c. because of the 30-day notice provisions for such facilities in AEA section 189.

[11] Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, 54 FR 33,168, 33,171 (Aug. 11, 1989) (final rule).

proceeding for granting a license to construct and operate a uranium enrichment facility; or a proceeding on a denial of an application), the NRC is proposing that the applicant (and, as applicable, the NRC staff) would file merits-based views in answers to proposed contentions, including the submission of supporting evidence, with the petitioner being able to reply to these views with additional supporting evidence. If proposed contentions are admitted, subsequent litigation on them could be conducted more swiftly than under the current process since more evidentiary material and related argument would have been submitted, and each party would thereby have a better understanding of the positions being taken on the contentions, which would allow their initial testimony and position statements to be more focused. Regarding specifics, under the new proposed hearing format, (a) answers to contentions from the applicant must (and answers to contentions from the NRC staff may) address the merits of the contentions, including submission of evidence and affidavits, in addition to addressing the contention admissibility criteria,[12] (b) petitioners' replies could address the answers' factual arguments on the merits with additional evidence,[13] and (c) litigants would have to file documents (except those already in ADAMS) and affidavits supporting their factual arguments, with an affidavit detailing the individual's knowledge of the facts alleged or expertise in the discipline(s) appropriate to the issues raised. Requiring the submission of supporting evidence and affidavits is fundamental to the proposal to accelerate the

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[12] Addressing the merits would be optional for the NRC staff; the staff would have flexibility to address only contention admissibility factors, consistent with its existing flexibility on whether to participate in the proceeding at all. This would provide the staff flexibility to make strategic resource decisions to maintain its review schedule. However, in highly expedited proceedings, the staff would be expected to address the merits of contentions in their answers to the extent practical to support the accelerated review and hearing schedule.

[13] Currently, a reply may not be used to add new documentary support for contentions, as illustrated by the Commission's 2006 decision in the Palisades proceeding (CLI-06-17, 63 NRC 727). Under this proposal and consistent with current case law, replies could not expand or modify the scope of the proposed contention or provide factual support that could have been provided in the original contention but was not. As the Commission emphasized in its 2004 decision in the National Enrichment Facility proceeding (CLI-04-25, 60 NRC 223), the contention admissibility and timeliness requirements demand a level of discipline and preparedness on the part of petitioners, who must examine the publicly available material and set forth their claims and the support for their claims at the outset. The Commission further explained that replies may not raise new arguments and should be narrowly focused on the legal or logical arguments in the answers to the hearing request.

hearing process by building on the substantial evidentiary submissions in the initial filings. The contention standards and criteria would not be changed by this requirement, and the presiding officer would not consider information pertaining to the merits of the contentions until after issuing a decision to admit or otherwise narrow the scope of the contentions.[14]

- Under § 2.309(b), contentions would be due within set time periods after publication of the *Federal Register* notice announcing the hearing opportunity depending on the type of application. As reflected in Table 1, the NRC would retain the standard 60-day filing period for the most complex applications, a 20-day filing period would be provided for transfer applications (consistent with current requirements), a 30-day filing period would be provided for highly expedited proceedings, and a 45-day filing period would be provided for all other applications. The most complex applications would be those for (1) a construction permit, an initial operating license, or an initial combined license under 10 CFR parts 50 or 52 for a commercial production or utilization facility, where the application does not reference a design certification or manufacturing license; or (2) a license to construct and/or operate a uranium recovery or fuel cycle facility under part 40 or part 70. Applications covered by the 45-day filing period would include 10 CFR part 54 power reactor license renewals, 10 CFR part 52 combined licenses referencing a design certification, 10 CFR part 52 early site permits, license amendment applications, non-power reactor applications, and limited work authorization applications. These proposed filing periods reflect the NRC's consideration of the need for timeliness and efficiency pursuant to the ADVANCE Act and E.O 14300, as well as the anticipated

[14] These changes would not be expected to substantially affect the burden associated with filing proposed contentions because they are consistent with the existing requirement in § 2.309(f)(1)(v) to factually support contentions with documentary and expert support. Also, NRC case law establishes the relevance of expert qualifications to contention admissibility determinations, e.g., the Commission's 2010 decision in the Levy County proceeding (CLI-10-2, 71 NRC 27). Further, many relevant documents would already be in ADAMS, and petitioners already routinely submit supporting documents, including signed expert declarations that detail the asserted qualifications of the expert. The NRC anticipates some additional burden associated with the filing of expert declarations in answers to contentions and in replies to answers, but in many cases experts are already supporting the litigants' preparation of their answers and replies, and accelerating the resolution of contested issues should bring about a compensating burden reduction for those contentions that are admitted.

length and complexity of the identified applications. This includes accounting for factors that would reduce the scope and complexity of the adjudicatory proceeding, such as whether an application for a production or utilization facility references a prior NRC approval providing issue finality in the adjudicatory proceeding that encompasses design issues.[15]

- The applicant and NRC staff would be required to submit answers to contentions filed by the § 2.309(b) deadline within 25 days of the contention for most applications (consistent with current requirements), and within 20 days of the contention for transfer proceedings and highly expedited proceedings. These proposed due dates reflect the need for timeliness and efficiency pursuant to the ADVANCE Act and E.O. 14300, and the expected complexity of the proceedings, while recognizing that the applicant (and sometimes the NRC staff) would face the new burden of responding to proposed contentions on the merits with supporting evidence, including affidavits.
- Consistent with current regulations, replies to answers to contentions submitted by the deadline in § 2.309(b) would be due within 7 days of the answers.
- These proposals would necessitate conforming changes to other regulations. For example, the NRC proposes to remove the reference in 10 CFR 54.27 to a 60-day filing period for hearing requests in power reactor license renewal proceedings because this proposed rule would impose a shorter filing period in such proceedings and because time periods for filing hearing requests should be specified in 10 CFR part 2 and not other parts of the NRC's regulations. Other conforming changes would be made in 2.309, e.g., revisions to § 2.309(a) and § 2.309(h)(1) to reflect that hearing requests and intervention petitions for the proceedings identified previously would be required to

[15] Existing NRC regulations establish that certain NRC approvals finally resolve specified issues in later proceedings referencing the NRC approval. To the extent an issue is finally resolved, it may not be revisited in a later proceeding absent a rule waiver—this effectively limits the scope of that later proceeding. Design certifications and manufacturing licenses are existing NRC approvals that provide issue finality in the adjudicatory proceeding that would encompass design issues. The NRC notes that a standard design approval does not provide finality in the adjudicatory proceeding and therefore would not affect the scope of the adjudication, while an early site permit provides finality in an adjudicatory proceeding but only on a narrower scope of issues that does not include the design of the facility.

address only standing while contention admissibility is assessed separately. The NRC also proposes to divide § 2.309(a) into subparagraphs for clarity. As part of the conforming changes to § 2.309(a), the NRC proposes to delete the sentence addressing proceedings under 10 CFR 52.103 because the changes in this proposed rule would make that sentence unnecessary. With the proposed deletion, proceedings under 10 CFR 52.103 would be covered by proposed § 2.309(a)(2).

The NRC proposes to retain the current filing periods for hearing requests, intervention petitions, answers, and replies in proceedings not affected by the proposals to consider standing separate from contention admissibility and to accelerate the consideration of the merits of contentions (i.e., proceedings on a license to construct and operate a uranium enrichment facility, a proceeding under subpart J of this part, a proceeding under 10 CFR 52.103, or a proceeding on a denial of an application). Applications for licenses to construct and operate a uranium enrichment facility are among the most complex types of applications the NRC receives, and the existing filing deadlines for these applications are the same as the corresponding deadlines proposed in this rule for applications of similar complexity. Also, as stated previously, this proposed rule is not intended to have more than a minimal impact on the other three listed types of proceedings.

For all proceedings, the NRC would modify § 2.309(j) to impose accelerated deadlines for decisions by presiding officers on hearing requests and contentions, ranging from 20 days from the filing of replies (e.g., for a decision on a hearing request in which the presiding officer addresses standing but not contention admissibility) to 35 days from the filing of replies (for a decision on hearing requests or contentions on certain major license applications). Also, consistent with the proposed § 2.307 standard for extensions of time, the § 2.309 deadlines for presiding officer decisions on hearing requests, intervention petitions, and contentions (including for such filings made after the filing deadline in § 2.309(b)) may be extended only if extraordinary circumstances prevent the presiding officer from issuing a decision by the deadline. Further, at the

earliest practicable opportunity, the presiding officer would be required to notify the Commission and the litigants of the delay and the extraordinary circumstances that necessitate a delay. The potential need for oral argument, prehearing conferences, or additional briefing would not by themselves constitute extraordinary circumstances. Finally, while not addressed in the regulation text itself, the proposed framework would provide the presiding officers flexibility to take steps to accelerate the commencement of the evidentiary hearing phase, such as prioritizing issuance of decisions on admissible contentions.

The NRC proposes several modifications to 10 CFR 2.309(c) to clarify and strengthen the requirements for challenges after the deadline (i.e., hearing requests, intervention petitions, and new or amended contentions filed after the deadline in § 2.309(b)). First, the NRC proposes to clarify and revise its regulations to avoid delays in making licensing decisions in certain proceedings due to the submission of 11th-hour challenges after the deadline near the end of the NRC staff's application review. Currently, petitioners must submit "motions for leave to file" contentions after the deadline that must satisfy § 2.309(c). Hearing requests and intervention petitions after the deadline must also satisfy § 2.309(c), although NRC regulations do not require a "motion for leave to file" such filings. The NRC proposes to extend the "motion for leave to file" concept to hearing requests and interventions petitions after the deadline, and clarify that challenges after the deadline would not be considered pending before the NRC until the motion for leave to file has been granted upon a showing of good cause under 10 CFR § 2.309(c). These changes would address statutory requirements for a pre-effectiveness hearing (or pre-effectiveness hearing opportunity) for certain licensing actions.[16] For example, AEA section 189a.(1)(A) allows the NRC to issue operating

[16] The Commission's 1992 decision in the Shoreham proceeding (CLI-92-4, 35 NRC 69) explains the statutory basis for the pre-effectiveness hearing requirements for specified production and utilization facilities. A partial list of applications for which a pre-effectiveness hearing (or hearing opportunity) is currently required is included in current 10 CFR 2.1202(a). In addition, AEA section 193(b) requires the NRC to complete a "single adjudicatory hearing" before issuing a license to construct and operate a uranium enrichment facility. A pre-effectiveness hearing is not

licenses for certain facilities “in the absence” of a request for hearing from a person whose interest may be affected; therefore, the pendency of a hearing request before the NRC could affect the timing of the NRC’s licensing decision. However, the AEA does not require a hearing request submitted after the specified deadline for hearing requests to be considered automatically pending before the NRC regardless of when it was filed. Rather, the related AEA section 189a.(1)(A) requirement specifying a 30-day notice period for operating licenses indicates that Congress contemplated that hearing requests be filed within specified periods.[17] The AEA provides no absolute right to file challenges after the specified notice period, nor does it indicate that petitioners may file challenges at any time they choose and thereby delay NRC action on the application. Under the proposed change, challenges after the deadline would not be considered pending before the agency (and therefore would not delay NRC action on an application subject to a pre-effectiveness hearing requirement) unless and until the motion for leave to file the challenge after the deadline has been granted upon a showing under § 2.309(c) of good cause for filing after the deadline. Thus, as reflected in a proposed new § 2.309(c)(7) and in revisions to § 2.340(i)(2), (j)(4), and (k)(2), the mere submission of such challenges after the deadline would not interfere with timely NRC licensing or regulatory decisions, even for those applications subject to a pre-effectiveness hearing (or pre-effectiveness hearing opportunity) requirement. The effectiveness of the licensing action would be stayed only if the petitioner meets the standard for granting a stay request.[18] To reflect the motion for leave to file terminology, the NRC also proposes conforming

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required for license transfers, most materials licenses, and reactor license amendments not involving a significant hazards consideration.

[17] The other pre-effectiveness hearing requirements in AEA section 189a. also involve provisions where the NRC is required to give specified notice. In addition, AEA section 193(b)(1)-(2) requires the NRC to conduct a *single* adjudicatory hearing before the issuance of a license for such construction and operation, which does not require that late-filed requests should automatically stay NRC action.

[18] Under Commission case law, the person requesting a stay of a licensing decision must either show irreparable harm that is imminent, certain, and great, or make an “overwhelming showing” of likelihood of success on the merits that amounts to a “virtual certainty.” See, for example, discussion in the Commission’s 2019 decision in the Pilgrim proceeding (CLI-19-11, 90 NRC 258) on pages 264 and 280.

changes in other paragraphs of § 2.309 and in 10 CFR 2.4 (definition of “contested proceeding”) and 2.323(a).

Second, the NRC proposes changes to the timeline for motions for leave to file and associated challenges after the deadline. For the motion and challenge to be considered timely, they would need to be filed within 30 days of the new, materially different information giving rise to the challenge after the deadline. Currently, the regulations do not specify when the filing is considered to be timely, although 30 days is the time usually prescribed in presiding officer scheduling orders. This filing period would be accelerated to 20 days from the new, materially different information in transfer proceedings and highly expedited proceedings because these proceedings are on a shorter timeline. Because challenges after the deadline should be narrowly focused on new, materially different information, less time would ordinarily be provided for answers to challenges after the deadline—20 days in most proceedings under the new proposed hearing format and enrichment proceedings, and 15 days in highly expedited proceedings and transfer proceedings. In addition, 7 days would be provided for replies associated with challenges after the deadline. Finally, presiding officer decisions on challenges after the deadline would be due within 25 days of the reply, a deadline reflecting the anticipated narrower scope of challenges after the deadline. These deadlines for answers, replies, and decisions are reflected in proposed § 2.309(c)(5) and (6).

Finally, the NRC proposes to modify § 2.309(g) to reflect changes to § 2.310 that are discussed later in this notice.

The different timelines under § 2.309 for initial filings and decisions thereon for hearing requests, intervention petitions, and contentions filed by the deadline in § 2.309(b)(1) and (b)(3) are reflected in Table 1 (for simplicity, the table uses “hearing request” to refer to both hearing requests and intervention petitions). As explained previously, for proceedings involving the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits (except for a high-level waste repository

proceeding under part 2, subpart J; a proceeding for granting a license to construct and operate a uranium enrichment facility; or a proceeding on a denial of an application), contentions are considered separately from the hearing request. Table 2 provides the proposed timelines for motions for leave to file hearing requests, intervention petitions, and new or amended contentions filed after the deadline in § 2.309(b)(1) and (b)(3).

**Table 1**: Proposed Schedule for Initial Filings/Decisions on Hearings Requests and Contentions Filed by 10 CFR 2.309(b)(1), (b)(3) Deadlines

| **Action** | **Transfer**<br>**2.309(b)(1)** | **Highly Expedited**<br>**2.309(b)(3)(iii)** | **Enrichment (Construct-and-Operate)**<br>**2.309(b)(3)(i)** | **Most Complex**<br>**2.309(b)(3)(ii)** | **Other Proceedings**<br>**2.309(b)(3)(iv)** |
|---|---|---|---|---|---|
| **Hearing Request** | 20 days from Notice | 30 days from Notice | 60 days from Notice | 30 days from Notice | 30 days from Notice |
| **Contentions (if considered separately)** | 20 days from Notice | 30 days from Notice | N/A | 60 days from Notice | 45 days from Notice |
| **Answer to Request** | 10 days from Request | 10 days from Request | 25 days from Request | 10 days from Request | 10 days from Request |
| **Answer to Contentions** | 20 days from Contentions | 20 days from Contentions | N/A | 25 days from Contentions | 25 days from Contentions |
| **Reply to Answer to Request** | 7 days from Answer to Request | N/A | 7 days from Answer to Request | 7 days from Answer to Request | 7 days from Answer to Request |
| **Reply to Answer to Contentions** | 7 days from Answer to Contentions | 7 days from Answer to Contentions | N/A | 7 days from Answer to Contentions | 7 days from Answer to Contentions |
| **Decision on Request** | 20 days from Reply to Answer to Request<br>(57 days from Notice) | 20 days from Answer to Request<br>(60 days from Notice) | 35 days from Reply to Answer to Request<br>(127 days from Notice) | 20 days from Reply to Answer to Request<br>(67 days from Notice) | 20 days from Reply to Answer to Request<br>(67 days from Notice) |
| **Decision on Contentions** | 30 days from Reply to Answer to Contentions | 30 days from Reply to Answer to Contentions | N/A | 35 days from Reply to Answer to Contentions | 35 days from Reply to Answer to Contentions |
| **Total** | 77 days from Notice | 87 days from Notice | 127 days from Notice | 127 days from Notice | 112 days from Notice |

**Table 2**: Proposed Schedule for Filings/Decisions on Motions for Leave to File Hearings Requests and New or Amended Contentions after 10 CFR 2.309(b)(1), (b)(3) Deadlines

| **Action** | **Transfer**<br>**2.309(b)(1)** | **Highly Expedited**<br>**2.309(b)(3)(iii)** | **Enrichment (Construct-and-Operate), Most Complex, Other Proceedings**<br>**2.309(b)(3)(i), (ii), (iv)** |
|---|---|---|---|
| **Motion for Leave to File Hearing Request/ Contention** | 20 days from New Information | 20 days from New Information | 30 days from New Information |
| **Answer to Motion and Request/Contention** | 15 days from Motion/Request/ Contention | 15 days from Motion/Request/ Contention | 20 days from Motion/Request/ Contention |
| **Reply to Answer** | 7 days from Answer | 7 days from Answer | 7 days from Answer |
| **Decision on Motion and Request/ Contention** | 25 days from Reply to Answer to Request | 25 days from Answer to Request | 25 days from Reply to Answer to Request |
| **Total** | 47 days from Motion/Request/ Contention | 47 days from Motion/Request/ Contention | 52 days from Motion/Request/ Contention |

**Selection of Hearing Procedures**

As part of this rule, the NRC proposes to use a revised subpart L hearing format to govern the adjudication of admitted contentions in almost all proceedings for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits subject to 10 CFR parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72. Subpart L is already used for most of these proceedings, but the NRC proposes increased use of subpart L with the following changes:

- The NRC proposes to conduct proceedings on a license to construct and operate a uranium enrichment facility under subpart L rather than subpart G because the revised subpart L provides a faster, more streamlined process than subpart G and is better suited for licensing proceedings (in fact, most licensing proceedings are already conducted under subpart L). The NRC previously decided to conduct these uranium enrichment proceedings under subpart G because AEA section 193 requires such proceedings to be conducted "on the record" (i.e., in accordance with the formal procedures in the APA for "on the record" proceedings). The U.S. Court of Appeals for the First Circuit subsequently concluded in 2004 (391 F.3d 338) that subpart L complies with these formal APA requirements. The proposed revisions to subpart L would continue to ensure that these enrichment proceedings would comply with the formal APA requirements, while being more streamlined and efficient than the subpart G procedures. The NRC proposes to remove and reserve 10 CFR 2.310(c) and revise 10 CFR 2.700 to reflect this change.[19]

- The NRC proposes to eliminate the provision in 10 CFR 2.310(d) and 2.700 providing that certain proceedings for nuclear power reactors would be held under subpart G if (as stated in § 2.310(d)) "the presiding officer by order finds that resolution

[19] The NRC does not propose to revise the provisions in 10 CFR 40.33, 70.23a, and 70.31(e) requiring the mandatory hearing for licenses to construct and operate uranium enrichment facilities to be conducted under subpart G of part 2. Changes to the mandatory hearing provisions are outside the scope of this rulemaking.

of the contention or contested matter necessitates resolution of issues of material fact relating to the occurrence of a past activity, where the credibility of an eyewitness may reasonably be expected to be at issue, and/or issues of motive or intent of the party or eyewitness material to the resolution of the contested matter." This possibility has not been exercised since it was established in the 2004 Adjudications Rule (69 FR 2182; January 14, 2004), and subpart L provides for cross-examination, if needed.

- The NRC proposes to remove and reserve 10 CFR 2.310(g) and subpart M, which currently governs license transfer proceedings, because the proposed revisions to subpart L would suitably ensure that transfer proceedings are conducted promptly. As explained later in this notice, the streamlined and expedited subpart L procedures would impose strict deadlines for completing license transfer evidentiary hearings in about 2 to 3 months. Also, subpart M is premised on the Commission serving as the presiding officer for transfer proceedings, and the NRC proposes to employ a Licensing Board as the presiding officer for transfer proceedings, as explained previously. Conforming changes to reflect the removal of subpart M are proposed in 10 CFR 2.4 (definition of "potential party") and in 10 CFR 2.313(a), 2.901, and 2.1103. In addition, the NRC proposes to revise 10 CFR 2.1103 to clarify the applicability of subpart K, add a reference to 10 CFR part 52 to maintain consistency with the hearing format selection requirements in 10 CFR 2.310, and provide, consistent with 10 CFR 2.310(e), that subpart K would apply upon the request of a party to use subpart K but that, otherwise, subpart L would be used.

- The NRC proposes to revise 10 CFR 2.310(e) and remove and reserve 10 CFR 2.310(h) to eliminate the option of using subpart N for licensing proceedings that would by default be conducted under subpart L (absent those rare circumstances triggering the use of an alternative subpart). Subpart N was created to provide simplified procedures with oral hearings for the expeditious resolution of disputes. However, the NRC has never used subpart N since it was created in the 2004 Adjudications Rule (69 FR 2182; January 14, 2004), and the NRC believes that the oral hearing procedures for

subpart N are generally not well suited for licensing proceedings, which often involve complex technical subject matter, where the precision of a primarily written hearing format is desirable.

- The NRC also proposes to make conforming changes to 10 CFR 2.310(a) to reflect these changes. In addition, the NRC proposes to remove cross-references in 10 CFR part 52 to specified subparts of 10 CFR part 2 as potential sources of hearing procedures for certain license applications. These cross-references are not consistent with the proposed changes to 10 CFR 2.310, and hearing formats should be specified in 10 CFR part 2 and not other parts of the NRC's regulations. The affected sections are 10 CFR 52.21 and 52.163, and 10 CFR part 52, appendix N, section 8.

**Timeline for Motions Submitted in Highly Expedited Proceedings**

Consistent with the overall streamlining approach of the proposed rule, the agency proposes to amend Section 2.323 to reduce the timelines for submittal of motions and corresponding answers in highly expedited proceedings. As previously discussed, highly expedited proceedings are narrower in scope and on a shorter timeline than standard proceedings covered under part 2. To achieve timelines commensurate with the substance and urgency of highly expedited proceedings, Section 2.323(a)(2) would be changed to require that motions filed in these proceedings must be made no later than seven (7) days after the occurrence or circumstance from which the motion arises. Further, Section 2.323(c) would be amended to state that answers to motions in highly expedited proceedings must be submitted within seven (7) days after service of the motion. The agency also proposes a simple restructuring of Section 2.323(c) into three subparagraphs (1)-(3), introducing additional clarity and improving readability of the applicable requirements.

**Reopening Standards**

The NRC intends to complete contested hearings on a schedule that supports licensing within the timelines contemplated by the ADVANCE Act and E.O. 14300. Consequently, to ensure that the adjudicatory process does not delay licensing

decisions, the proposed revised adjudicatory procedures have been constructed so as to generally accommodate an evidentiary hearing on admitted contentions filed by the § 2.309(b) deadline for filing contentions and a hearing on admitted contentions filed after that deadline, even if there is essentially no overlap between the filing and decision schedules for the two. For example, if a party files new contentions the day after the presiding officer issues an initial decision on the Standard Record Closure Date following an evidentiary hearing on initially filed contentions, the revised procedures would generally allow the agency to complete a full evidentiary hearing on those new contentions within the 18-month and 1-year timelines in E.O. 14300. Thus, the NRC has a high confidence that application of these revised adjudicatory procedures will enable the agency to meet the E.O. 14300 timelines in the vast majority of proceedings.

The NRC acknowledges that in rare cases critical issues may arise late in a proceeding that might require the adjudication to exceed the NRC staff review timelines established in accordance with the ADVANCE Act and E.O. 14300. Therefore, to ensure that only critical issues would lead to such delays, the NRC proposes to amend 10 CFR 2.326 to specify that the adjudicatory record will close on the Standard Record Closure Date for the proceeding. As a result, contentions filed after the record closes would need to meet the heightened reopening standards in 10 CFR 2.326, which require the contention to be timely in accordance with 10 CFR 2.309(c), address a significant issue, and demonstrate that it would likely materially affect the outcome of the proceeding.

These proposed revisions to 10 CFR 2.326 would comport with existing NRC precedent. The Commission has routinely emphasized that the adjudicatory record for a proceeding closes at the conclusion of an evidentiary hearing, for example, in a 2012 decision in the Pilgrim proceeding (CLI-12-3, 75 NRC 132). Also, the Commission has applied the reopening provisions even earlier in a proceeding (e.g., when a proceeding terminates once all contentions have been decided), such as in the Commission’s 2012 decision in the North Anna proceeding (CLI-12-14, 75 NRC 692). Therefore, under existing precedent, the proceeding would terminate and the reopening provisions apply

in a situation when a presiding officer denies all hearing requests filed by the deadline in § 2.309(b) and there are no pending contentions in the proceeding.

It is possible under existing precedent for a chain of periodically filed new or amended contentions, none of them admissible, to hold open the record of the proceeding even to the end of the NRC's review of an application. To avoid this anomalous result and to provide a standard time for when the record would close for a proceeding, the proposed revisions to 10 CFR 2.326 would add a new paragraph (e) stating that the record for the proceeding will automatically close at the Standard Record Closure Date, a date providing sufficient time to hold an evidentiary hearing on admitted contentions submitted by the original deadline. It would provide further, consistent with existing practice, that if the presiding officer enters an order closing the record following an evidentiary hearing, then the record would close at that earlier point. The Commission has also recognized that if some issues are pending once the record closes, the record may remain open on those limited issues; an example is the Commission's decision in the Pilgrim proceeding (CLI-12-3, 75 NRC 132). Therefore, paragraph (e) would also clarify that if other contentions either remain pending or are subject to a motion for leave to file at the time the record closes, the record will remain open only with respect to the issues raised by those contentions.

By providing the public with an opportunity to request a hearing prior to closing the record, this proposal comports with applicable Federal case law considering challenges to the NRC's reopening standards. In the D.C. Circuit federal court of appeal's 1984 decision in *Deukmejian v. NRC* (751 F.2d 1287), the NRC required an intervenor to meet the reopening standards to participate in a proceeding on a *full power* operating license to challenge an applicant's application to amend a *low power* license by extending the license term. The court determined the two actions were separate proceedings. By requiring the petitioner to meet the heightened pleading requirements in the reopening standard, the NRC improperly abridged the petitioner's hearing rights under section 189a. of the Atomic Energy Act. Thus, under *Deukmejian*, the NRC must

provide petitioners with at least one opportunity to participate in an adjudication prior to closing the record. The proposed revisions to 10 CFR 2.326 would meet this standard because they would not close the record until well after the opportunity to request a hearing expires.

Also, because the proposed revisions to 10 CFR 2.326 would automatically close the record in the specified circumstances, the NRC proposes to revise §§ 2.104, 2.105, and 2.309(b)(5) to require *Federal Register* notices announcing opportunities to request hearings to state the Standard Record Closure Date for the proceeding. In so doing, this would put the public on notice and provide clarity on when the record would close.

Finally, in addition to the adjustments described previously to address the scheduling directives of the ADVANCE Act and E.O. 14300, the agency proposes to modify the criteria included in 10 CFR 2.326(a)(2) to state that a significant environmental issue can only be identified in a proceeding where a categorical exclusion does not apply. In circumstances where a categorical exclusion is used to comply with the National Environmental Policy Act, by definition, there are no significant environmental issues associated with the proposed Federal action. The agency considers this to be a clarity change responsive to the potential for increased use of categorical exclusions in future reviews. In accordance with E.O. 14300 Section 5(c), the NRC is separately considering revisions to its regulations governing compliance with the National Environmental Policy Act.

**Discovery**

The NRC proposes several changes to reduce burdens to the parties from their obligations to make certain disclosures after contentions are admitted in most licensing proceedings and also proposes to expedite the production of initial disclosures to support the accelerated evidentiary hearing timeframes in subpart L.[20] First, the NRC staff's hearing file obligations would be entirely eliminated. Experience shows the

[20] These proposed changes would not affect the discovery provisions in proceedings under subpart G or subpart J of part 2.

hearing file currently required by § 2.1203 is burdensome and provides little value to the litigation because it covers the entire application under review instead of focusing on the admitted contentions. Moreover, the hearing file was established before the NRC required electronic filing of applications, regularly posted the entirety of applications and related documents on its website, and developed robust search functions in public-facing ADAMS. To the extent members of the public face difficulties in searching ADAMS, NRC Public Document Room staff are available to assist during business hours. Thus, the rationale supporting the hearing file obligation has become outdated. By eliminating the hearing file, the NRC does not intend to suggest that the agency is reverting to traditional discovery; therefore the NRC proposes to retain paragraph (d), which specifies that no additional forms of discovery are authorized.

The NRC also proposes eliminating the NRC staff's 10 CFR 2.336(b) disclosure obligations (except for proceedings on denials of applications, which is discussed next) because the staff ordinarily makes the application, correspondence with the applicant, and other documents related to the review (e.g., guidance) publicly available in ADAMS. Also, in appropriate circumstances, the Secretary of the Commission issues orders under 10 CFR 2.307(c) to provide opportunities for potential parties to seek access to sensitive unclassified information to support their preparation of contentions. Further, the staff's disclosures largely replicate the applicant's required disclosures or otherwise concern internal documents that are typically not produced to the other parties. Moreover, the staff is a neutral party without a stake in the application—the applicant, who has a direct stake in the application, should be responsible for producing relevant documents.

The NRC proposes to retain the 10 CFR 2.336(b) disclosures obligation (in modified form) in proceedings on denials of applications because no other party would replicate the staff's disclosures and the staff has a different role in a proceeding on the denial of an application than in other contested licensing proceedings. The NRC further proposes to modify 10 CFR 2.336(b) to tailor the required document disclosures to the

circumstances associated with a proceeding on a denial of an application (e.g., the document categories associated with the application and NRC correspondence with the applicant would be eliminated because the applicant already would be in possession of this material). Finally, the NRC proposes conforming changes to § 2.336(a) to reflect applicant disclosures in a proceeding on a denial of an application.

Second, the NRC proposes further changes to 10 CFR 2.336 to reduce the burdens of other participants. Parties commonly agree to exclude from disclosures non-public draft documents that have not been circulated among the parties; the NRC proposes to codify this practice in the NRC's regulations in new subparagraphs (a)(4) and (b)(2). In addition, parties should not be required to update their disclosures during the evidentiary hearing phase because the most important relevant documents should have been disclosed by this point, and the evidentiary hearing is the most resource-intensive phase of the process. Notably, this would not relieve litigants from their ongoing general obligation to keep the presiding officer and litigants informed of relevant new developments in a proceeding, as the Commission emphasized in its 2006 decision in the USEC proceeding (CLI-06-10, 63 NRC 451).

Finally, the NRC proposes to revise § 2.336 to require the applicant, petitioner, and (as applicable) staff to produce their initial disclosures within 20 days of a presiding officer order admitting contested issues into the proceeding rather than 30 days from a presiding officer order granting a hearing request or intervention petition. Twenty days should be sufficient for diligent litigants to prepare their 10 CFR 2.336 disclosures, and an accelerated initial disclosures schedule is necessary to support the expedited evidentiary hearing timeframes that are proposed in subpart L. Moreover, twenty days is greater than the general timeline contemplated for initial disclosures under the Federal Rules of Civil Procedure.

The 20 days would generally run from the date of an order admitting contentions to reflect the proposal in this proposed rule for most licensing proceedings to separate decision-making on hearing requests from decision-making on proposed contentions.

This proposed revision also accounts for new or amended contentions that might be admitted after the 10 CFR 2.309(b) initial filing deadline for contentions. However, in a proceeding on a denial of an application, the 20-day period would run from the order granting a demand for hearing.

**Conforming Changes to Scheduling Regulations**

To accommodate the shorter timeframes for completing adjudications contemplated by this proposed rule, the NRC is proposing a number of conforming amendments to other sections in part 2, which pertain to scheduling. Specifically, the NRC proposes to revise paragraph (b) in 10 CFR 2.312, “Notice of hearing,” to reflect the Commission’s expectation that considerations informing the selection of a time and place for a hearing should not override the overall timeframes established for timely adjudications by this rule or by any proceeding-specific Commission order. To provide additional flexibilities that may facilitate meeting those timeframes, the NRC also proposes to revise 10 CFR 2.329, “Prehearing conference,” to give the presiding officer or Commission discretion on whether to hold a prehearing conference.

Next, the NRC proposes a number of edits to 10 CFR 2.332, “General case scheduling and management,” that will conform to the streamlined procedures and shortened timeframes proposed elsewhere in this rule. Because the timeframes proposed by this rule would be mandatory, the NRC proposes to revise paragraph (a) to reflect the presiding officer’s obligation to develop a schedule that would meet the licensing timeframes proposed by this rule. Likewise, the NRC proposes to amend paragraph (d) to conform to the Commission’s expectations that hearings under subpart L would ordinarily begin once the presiding officer admits contentions, not when the staff issues its review documents. Specifically, the presiding officer would immediately proceed to an evidentiary hearing after the admission of a contention unless either (i) the NRC staff or applicant intend to seek dismissal of the admitted contention or (ii) the NRC staff decides to participate as a party but is not yet able to take final positions on the matters in controversy. Section 2.332(d) includes notification

requirements to effectuate this provision. The commencement of the evidentiary hearing phase would be delayed in cases where the NRC staff or applicant seek to dismiss a contention because the process for seeking dismissal is quicker and less resource-intensive than an evidentiary hearing; thus, the dismissal process may be a more efficient way of resolving a contention if the presiding officer decides that the standards for dismissing the contention are satisfied.

The other reason for delaying the commencement of the evidentiary hearing—when the NRC staff seeks to participate as a party but is not able to take a final position on the matters in controversy—reflects the special role the NRC staff has in the licensing process and the Commission's desire to ensure that the presiding officer is aware of the NRC staff's considered position on the contested issues in those cases where the staff chooses to participate as a party. The NRC staff may not always be in the position (particularly early in its review) to take a final position on the matters in controversy—in this regard, the NRC staff is in a different position from the petitioner (who formulated and supported the proposed contention and should be in a position to commence the evidentiary hearing upon admission of the contention) and the applicant (who developed the application and should have the wherewithal to promptly address challenges to it). In the interests of prompt adjudication, the proposed § 2.332(d) would further require the NRC staff, in cases where it decides to participate as a party but is not yet able to take a final position on the admitted contention, to prioritize its resources to put itself in a position to provide testimony on the contention at the earliest practicable time and notify the presiding officer and the other parties when the staff is ready to do so.

Section 2.332(d) would be further revised to require the presiding officer, to the greatest extent practicable, to establish a schedule that will not extend past the NRC staff's scheduled date for completing its review of the particular application. This provision has the purpose of ensuring timely NRC decision-making when it is practicable to do so and is intended to address both individual NRC reviews that are on a more

expedited review schedule as well as the resolution of admitted contentions submitted later during an NRC review.

As a conforming change, the NRC proposes to revise 10 CFR 51.104(a) to remove the prohibition, in proceedings where a final environmental impact statement (EIS) has been prepared in connection with a proposed action, on the NRC staff either presenting a position on matters within the scope of the National Environmental Policy Act or offering the final EIS into evidence until the final EIS is made available. There is no statutory basis for this prohibition. Also, delaying the commencement of evidentiary hearings on environmental contentions until a final EIS has been completed, which might occur near the end of the NRC's review period, does not support the timeliness and efficiency goals of the ADVANCE Act and E.O. 14300. With the removal of this prohibition, the operative provisions of § 51.104(a) and (b) would be essentially identical, so the NRC further proposes to consolidate § 51.104(a) and (b) into § 51.104(a) and remove and reserve § 51.104(b).

In another conforming change, the NRC proposes to revise 10 CFR 2.332(b) to reflect that only enforcement proceedings, not licensing proceedings, would be subject to the model milestones in appendix B of part 2. As discussed later, strict deadlines would be imposed in licensing proceedings rather than model milestones.

Finally, the NRC proposes to amend 10 CFR 2.334, "Implementing hearing schedule for proceeding," by clarifying paragraph (a) to directly state the presiding officer's obligation to take necessary measures to ensure timely adjudication, by revising paragraph (b) to incorporate the standard in section 2.307(a) for extending a schedule, and by revising paragraph (c) to require the presiding officer to notify the Commission of any delays beyond the timeframes established by this rule.

**Proposed Revisions to Subpart L Hearing Format and Conforming Changes Elsewhere in Part 2**

As explained previously, the NRC proposes to make a number of significant changes to subpart L to streamline and accelerate the hearing process for proceedings

for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits subject to 10 CFR parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72. The two most significant proposed changes are (1) to establish strict deadlines for the issuance of initial decisions in most licensing proceedings and (2) to provide greater flexibility to the presiding officer to decide which components of the subpart L hearing process are needed to support the presiding officer's decision-making. The NRC also proposes other changes to streamline proceedings and ensure prompt and accurate decision-making, as discussed in the following paragraphs.

The NRC proposes to establish strict deadlines for the issuance of an initial decision to ensure that adjudicatory proceedings are promptly conducted and support the efficiency goals and mandates of the ADVANCE Act and E.O. 14300. These deadlines would be tailored to different types of proceedings to account for the varying complexity of different license applications as well as the greater need for expedited decision-making in certain proceedings (e.g., in highly expedited proceedings). The NRC proposes that these deadlines may only be extended if unavoidable and extreme circumstances necessitate a delay.

The NRC proposes to provide presiding officers greater flexibility in structuring the subpart L evidentiary hearing phase because admitted contentions could take a wide variety of forms, and the presiding officer in an individual proceeding is better placed to decide what information is needed for the admitted contentions before it to support accurate decision-making and the development of a sound record, while ensuring that the parties are given a fair and equal opportunity to make their cases (e.g., if one party may file written testimony and a position statement, all other parties would have the same opportunity). The presiding officer would also tailor the hearing schedule to the particular circumstances of a proceeding while complying with requirements for decision-making deadlines.

The specific proposed changes to subpart L and conforming changes elsewhere in this part are detailed in the following subsections. For clarity and completeness, the

NRC will detail here all proposed changes to subpart L, including those discussed elsewhere in this notice.

A. Changes to Scope Provisions in 10 CFR 2.1200

The NRC proposes to revise 10 CFR 2.1200 to reflect the modified scope of subpart L, as discussed previously in the context of changes to 10 CFR 2.310 and 2.700. As stated before, license transfer proceedings would now be conducted under subpart L, as well as contested proceedings on the grant of licenses to construct and operate uranium enrichment facilities. The NRC also proposes to clarify § 2.1200 to reflect the existing provision in § 2.310(b) providing that enforcement proceedings may be held under subpart L if all parties agree.

B. Changes to 10 CFR 2.1202 Regarding the NRC Staff's Authority and Role

The NRC proposes several modifications to the provisions in 10 CFR 2.1202 regarding the NRC staff's authority to take licensing actions and its role in the adjudicatory proceeding. First, the NRC proposes to modify provisions on the issuance and effectiveness of licensing decisions during the pendency of a hearing. Currently, § 2.1202(a) provides that the NRC staff is expected to promptly issue its approval or denial of the application, or take other appropriate action on the underlying regulatory matter for which a hearing was provided, and that the NRC staff's action is effective upon issuance except for several listed licensing actions. The NRC proposes to revise the list of exceptions in § 2.1202(a) as follows:

- Currently, the listed exceptions include all applications to construct and/or operate a production or utilization facility (including limited work authorizations and combined licenses). However, the pre-effectiveness hearing requirements in AEA section 189a. apply to production and utilization facilities licensed under AEA sections 103 and 104b. (corresponding to facilities under 10 CFR 50.21(b) and 50.22) or testing facilities licensed under AEA section 104c. (corresponding to a facility under 10 CFR 50.21(c) that meets the definition of "testing facility" in 10 CFR 50.2). The AEA's pre-effectiveness hearing requirements do not apply to production and utilization

facilities licensed under AEA section 104a. (i.e., medical therapy facilities under 10 CFR 50.21(a)) or to production and utilization facilities licensed under AEA section 104c. that are not testing facilities (i.e., non-testing facilities under 10 CFR 50.21(c)). The NRC proposes to revise 10 CFR 2.1202(a)(1) to reflect the scope of the AEA's pre-effectiveness hearing requirements and in recognition of the lower safety significance of medical therapy facilities under 10 CFR 50.21(a) and non-testing facilities under 10 CFR 50.21(c).

- The NRC proposes to revise 10 CFR 2.1202(a)(3) to remove the current exception for 10 CFR part 52 manufacturing licenses and put in its place an exception for licenses to construct and operate uranium enrichment facilities. In the 2007 rule adding the exception for manufacturing licenses (72 FR 49352, page 49420; August 28, 2007), the Commission acknowledged that there is no statutory requirement for including an exception for manufacturing licenses, but stated, "Nonetheless, as a matter of discretion, the NRC has decided to treat manufacturing licenses similar to construction permits in this regard, although the NRC reserves the right to change its practice in the future." The NRC proposes to remove the exception for manufacturing licenses because such licenses are not subject to the AEA's pre-effectiveness hearing requirements, a manufacturing license authorizes only the manufacture (not operation) of a facility, and vendors may fabricate major portions of a facility without a manufacturing license so long as those portions do not constitute a production or utilization facility. In these circumstances, there is no substantial reason to delay the issuance and effectiveness of a manufacturing license because of a pending hearing on the license application. The NRC proposes to include an exception for applications for licenses to construct and operate uranium enrichment facilities. Such applications are currently subject to hearings under subpart G, but the NRC proposes to conduct hearings on these applications under subpart L. As stated previously, licenses to construct and operate uranium enrichment facilities are subject to a statutory pre-effectiveness hearing requirement, so it is appropriate to include them in the list of exceptions in 10 CFR 2.1202(a).

The NRC also proposes to modify 10 CFR 2.1202(b), regarding the role of the NRC staff in the hearing process, to accelerate the time in which the NRC staff is required to notify the presiding officer and the other parties of whether it will participate as a party in the proceeding. In addition, the NRC proposes to modify this section to reflect the proposed provisions (discussed previously) regarding the elimination of the staff's hearing file obligations in 10 CFR 2.1203 and the elimination (in the proceedings addressed by § 2.1202(b)(2)) of the staff's document disclosure obligations under 10 CFR 2.336(b).

C. Changes to 10 CFR 2.1203 Regarding Elimination of Hearing File

As discussed previously, the NRC proposes to eliminate the hearing file requirements in paragraphs (a) to (c) of 10 CFR 2.1203, while retaining the prohibition on additional discovery currently in paragraph (d) of 10 CFR 2.1203.

D. Changes to 10 CFR 2.1205 Regarding Summary Disposition

The NRC proposes several changes regarding the schedule for summary disposition motions. First, to avoid unduly burdening parties as they undertake evidentiary hearing activities, the NRC proposes to modify § 2.1205(a) so that summary disposition motions are not permitted later than 30 days before the scheduled date for filing initial written testimony. Summary disposition may be a useful tool to avoid the resource expenditures associated with an evidentiary hearing, but after evidentiary hearing activities are underway, the filing of summary disposition motions risks distracting parties from their hearing preparations and burdening them unnecessarily.

Second, consistent with other proposed changes in this proposed rule, the NRC proposes to reduce the time for filing answers to summary disposition motions from 20 days to 15 days after service of the motion. The NRC also proposes to provide a 20-day period from the filing of answers for a decision on the motion. Fifteen days should be sufficient for parties to address the pertinent standards for summary disposition motions, and a 20-day period for decisions is consistent with the overall hearing schedule and other proposed timeframes for decisions in this proposed rule.

E. Changes to 10 CFR 2.1206 to 2.1210 Regarding the Hearing Process and Schedule

Currently, 10 CFR 2.1206 to 2.1210 provide the principal requirements for the subpart L evidentiary hearing process and schedule, including prescriptive requirements for which written filings are permitted and when, and whether an oral hearing must be held. For the reasons discussed earlier, the NRC proposes to replace these detailed requirements with simpler, more flexible and informal provisions for most proceedings. As reflected in proposed § 2.1206(a)(2), a hearing in a proceeding for the grant of a license to construct and operate a uranium enrichment facility would be required to comply with the APA's formal procedures for "on the record" hearings. As explained in the following paragraphs, §§ 2.1206 and 2.1207 would be completely revised, while §§ 2.1208 and 2.1209 would be removed and reserved, and minor conforming changes would be made § 2.1210.

Under proposed § 2.1206(a), the presiding officer would issue a scheduling order that would include the presiding officer's determinations on which written filings are permitted, the schedule for these filings, whether to hold an oral hearing, and the schedule for issuing an initial decision. Motions for cross-examination under 10 CFR 2.1204 would be permitted (consistent with the current regulations). Otherwise, the presiding officer would largely have flexibility to decide which written filings the parties would be permitted to make to provide the information necessary to support the presiding officer's decision. These potential written filings, which would be listed in § 2.1206(b)(1), are (1) initial testimony, position statements, and supporting exhibits; (2) rebuttal testimony, position statements, and supporting exhibits; (3) motions in limine and motions to strike; (4) written briefing and/or written responses to questions from the presiding officer; (5) proposed questions for the presiding officer to ask the witnesses; and (6) proposed findings of fact and conclusions of law. These listed filings are currently available in a subpart L hearing process, but the presiding officer would have flexibility to determine which filings to permit in a particular case. Similarly, the presiding officer would generally have flexibility to determine whether an oral hearing is needed to

support the presiding officer's decision—currently, an oral hearing is required unless all parties agree to a hearing based solely on written presentations, but the NRC sees no need to require that an oral hearing be held as a default matter.

The initial decision is the culmination of the evidentiary hearing process, and the NRC proposes that the scheduling order include the schedule for an initial decision, which must comply with the requirements of 10 CFR 2.332 and (if applicable) 10 CFR 2.1207. As discussed later in this document, proposed 10 CFR 2.1207 provides schedule requirements for the issuance of initial decisions in most licensing proceedings.

Proposed § 2.1206(b)(2) identifies certain additional flexibilities for the parties and the presiding officer that would apply depending on which written filings are permitted. Historically, written testimony in subpart L proceedings has been submitted in question-and-answer form, but a party would be allowed to submit testimony in affidavit form if the party prefers. Also, the NRC proposes that most licensing proceedings would be subject to the § 2.309(k) requirement that litigants include witness evidence in their initial filings in the form of affidavits—this requirement would allow these affidavits to be entered into evidence at the evidentiary hearing if they meet the criteria for admissible evidence in 10 CFR 2.337. Section 2.1206(b)(2) would also provide that if statements of position and proposed findings of fact and conclusions of law are both permitted, parties would be allowed to file statements of position in the form of proposed findings and conclusions to facilitate the prompt preparation of proposed findings and conclusions after the hearing. Finally, § 2.1206(b)(2) would clarify the presiding officer's authority to allow oral motions in limine or motions to strike in lieu of (or in addition to) written filings. Proposed § 2.1206(b)(2) would not provide an exhaustive list of flexibilities, and the presiding officer would retain all authority provided in the pertinent provisions of part 2 to regulate the conduct of the proceeding.

Proposed § 2.1206(c) retains requirements in current subpart L regarding the participants' ability to designate and present their own witnesses; the presiding officer's discretion to formulate questions and ask questions as the presiding officer considers

appropriate; the presiding officer's authority to address situations where a witness is unable to appear in an oral hearing; and existing provisions on the propounding of questions by the presiding officer and the submission of proposed questions for the presiding officer to ask the witnesses.

While the presiding officer would ordinarily have great flexibility to structure the evidentiary hearing, for two types of proceedings—those on applications to construct and operate a uranium enrichment facility and on denials of applications—the NRC proposes § 2.1206(d) that would require (consistent with current subpart L) that (1) a transcribed oral hearing be held unless all parties jointly agree to dispense with an oral hearing, and (2) each party be permitted to file written testimony, a position statement, and supporting exhibits; to submit rebuttal evidence and argument; and to file proposed findings of fact and conclusions of law. These elements of an evidentiary hearing would be required for a proceeding concerning the grant of a license to construct and operate a uranium enrichment facility to maintain consistency with the requirements for formal "on the record" hearings in the APA.[21] The NRC also proposes to retain these elements of a subpart L hearing for denials of applications because hearings on denials ordinarily arise from a "demand for hearing" under 10 CFR 2.103 or 2.108 that would not typically involve the robust issue development provided in the initial filings under the 10 CFR 2.309 process.[22]

The NRC proposes in § 2.1207 to provide scheduling requirements for issuance of initial decisions in proceedings under subpart L, with the exception of enforcement

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[21] The NRC recognizes that an oral hearing may not be required by the APA in all cases. As reflected in 5 U.S.C. § 556(d), an agency may, in "applications for initial licenses …, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form" even in a formal APA hearing.

[22] The NRC acknowledges that for denials noticed under 10 CFR 2.108(b), any person whose interest may be affected may file an intervention petition under 10 CFR 2.309, but the NRC does not anticipate that a hearing on a denial of an application would ordinarily arise through this mechanism. Instead, a hearing on a denial of an application would most likely result from a demand for hearing from the applicant under 10 CFR 2.103 or 2.108—a demand for hearing is not subject to the requirements of 10 CFR 2.309.

proceedings and proceedings on denials of applications.[23] For each type of proceeding, the NRC proposes (1) a deadline for initial decisions for contentions, including (as applicable) a shorter deadline for initial decisions on contentions submitted after the Standard Record Closure Date, (2) a specification of the Standard Record Closure Date for that type of proceeding, and (3) a requirement that unavoidable and extreme circumstances are necessary for delays beyond the deadline for initial decision. Deadlines are stated in terms of calendar days from the admission of the contention, assuming that the presiding officer immediately proceeds to an evidentiary hearing in accordance with 10 CFR 2.332(d), although if this does not occur (e.g., the NRC staff is not yet able to take a final position on the contested issues) the deadline would run from an alternative triggering event established in the scheduling order (e.g., the NRC staff's notification that it is able to take a final position on the contested issues). Also, § 2.1207 would require unavoidable and extreme circumstances for extensions beyond the prescribed initial decision deadlines to ensure that delays in decision-making occur only when necessary. Relatedly, in accordance with proposed changes to § 2.334(c) discussed previously, the presiding officer must provide written notification to the Commission any time during the course of the proceeding when it appears that the issuance of the initial decision will be delayed beyond the time specified in the hearing schedule.

In establishing proposed deadlines, the NRC considered the anticipated complexity of the pertinent application, along with associated NRC review deadlines and goals. More time is being proposed for complex applications subject to an 18-month deadline for a final decision on the application, while less time is being proposed for less

[23] The NRC is not proposing specific schedules for issuance of initial decisions in subpart L enforcement proceedings and proceedings on denials of application because circumstances are likely to vary in these proceedings. In addition, neither the ADVANCE Act nor E.O. 14300 address schedules for enforcement proceedings. Also, denials of applications would be subject to the general requirement in 10 CFR 2.332(c) to establish a schedule to expedite the proceeding, and the Commission expects that presiding officers would consider relevant comparable hearing schedules in § 2.1207 in establishing a hearing process and schedule that ensure a prompt and fair proceeding that supports accurate decision-making and development of an adequate record.

complex applications subject to shorter deadlines for a final decision on the application. In some cases, the NRC has not established a standard fixed deadline shorter than 18 months for a particular application, but the NRC would seek to come to a final decision in substantially less than 18 months, if practical, because the application review is less complicated (e.g., a commercial reactor application referencing an issued design certification, which finally resolves most design issues for both the staff review and the adjudicatory proceeding).

The NRC has also considered different timelines depending on when the contention was submitted. For two reasons, the NRC generally proposes a shorter deadline for initial decisions on contentions submitted after the Standard Record Closure Date. First, an expedited schedule is needed for admitted contentions submitted later in a proceeding to support prompt NRC decision-making consistent with the direction in the ADVANCE Act and E.O. 14300. As stated previously and discussed in more detail later in the context of Table 4, the NRC's general overall goal with these changes has been to establish a process where two non-overlapping hearings could be held within the 18-month and 1-year E.O. 14300 deadlines (one hearing on contentions submitted by the § 2.309(b) deadline—which would conclude on the Standard Record Closure Date—and the second hearing on a new or amended contention submitted after the Standard Record Closure Date). Second, consistent with other proposed changes to part 2 (in particular, those in 10 CFR 2.332(d)), the NRC would ordinarily proceed to an evidentiary hearing on contentions submitted earlier in the proceeding as soon as practicable. Thus, hearings on admitted contentions submitted later in the proceeding would be expected to narrowly focus on new information arising later in the review, in contrast to contentions submitted early in the review that might embrace the entire application. To promote clarity, § 2.1207 would specify the Standard Record Closure Date for different types of proceedings, based on the proposed definition of this term in 10 CFR 2.4, and the Standard Record Closure Date for a particular proceeding would be

specified in the *Federal Register* notice announcing the hearing opportunity, in accordance with proposed revisions to 10 CFR 2.104, 2.105, and 2.309.

Regarding the specific deadlines in 10 CFR 2.1207, the NRC proposes in § 2.1207(a) the longest deadline (145 days) for a proceeding on the grant of a license to construct and operate a uranium enrichment facility. Such proceedings are required to comply with the formal APA hearing requirements; formal proceedings generally require more time than informal proceedings. Also, unlike the other proceedings subject to § 2.1207, the regulations would not provide for evidentiary submissions in answers to contentions from the applicant and NRC staff or in the petitioner's replies to those answers—in other words, more evidentiary material would have to be introduced in the evidentiary hearing process for enrichment proceedings under § 2.1207(a) because less would be introduced in the initial filings. While the presiding officer would have flexibility to establish a hearing schedule based on the specific circumstances of a proceeding, the hypothetical schedule that follows in Table 3 shows that 145 days is sufficient time to conduct an evidentiary hearing that includes initial and rebuttal testimony and statements of position, an oral hearing, and post-hearing proposed findings of fact and conclusions of law. A shorter deadline (110 days) would be provided for hearings on contentions submitted after the Standard Record Closure Date, for the reasons given previously and as supported by the hypothetical timeline in Table 3. These proposed initial decision deadlines, combined with the associated timetables for initial filings identified in Tables 1 and 2, support the NRC's general 18-month deadline for final decisions on these enrichment applications with substantial margin, as shown in Table 4.

**Table 3**: Hypothetical Timeline for an Evidentiary Hearing on a Proceeding for the Grant of a License to Construct and Operate a Uranium Enrichment Facility

| *Filing or Action* | *Hearing Timeline for Contentions Submitted by the Standard Record Closure Date* | *Hearing Timeline for Contentions Submitted After the Standard Record Closure Date* |
|---|---|---|
| *Mandatory Disclosures* | 20 days from admission of contention | 20 days from admission of contention |
| *Initial Testimony & Position Statements* | 45 days from admission of contention | 35 days from admission of contention |

| *Filing or Action* | *Hearing Timeline for Contentions Submitted by the Standard Record Closure Date* | *Hearing Timeline for Contentions Submitted After the Standard Record Closure Date* |
|---|---|---|
| *Motions for Cross-Examination* | 7 days from initial testimony | 7 days from initial testimony |
| *Rebuttal Testimony & Position Statements (& Answers to Cross-Examination Motions)* | 14 days from initial testimony | 14 days from initial testimony |
| *Parties File Proposed Questions and Board Issues Decision on Cross-Examination* | 7 days from rebuttal | 7 days from rebuttal |
| *Oral Hearing* | 15-25 days from rebuttal | 10-20 days from rebuttal |
| *Proposed Transcript Corrections* | 7 days from the close of the oral hearing | 7 days from the close of the oral hearing |
| *Proposed Findings and Conclusions* | 25 days from close of oral hearing | 20 days from close of oral hearing |
| *Board's Initial Decision* | 60 days from close of oral hearing | 40 days from close of oral hearing |
| *Total* | 135-145 days if oral hearing lasts 1 day | 100-110 days if oral hearing lasts 1 day |

Section 2.1207(b) would prescribe initial decision deadlines for proceedings on (i) the grant of a construction permit, an initial operating license, or an initial combined license under 10 CFR parts 50 or 52 for a production or utilization facility of the type described in 10 CFR 50.21(b) or 50.22, where the application does not reference a design certification or manufacturing license, or (ii) the grant of a license to construct and/or operate a uranium recovery or fuel cycle facility under part 40 or part 70 (other than a license to construct and operate a uranium enrichment facility). The applications addressed by § 2.1207(b) are the most complex type of applications (similar in complexity to applications for licenses to construct and operate a uranium enrichment facility) and are also subject to a general 18-month review deadline. The proposed initial decision deadlines in § 2.1207(b) would be substantially shorter than the deadlines in § 2.1207(a) because the proceedings identified in § 2.1207(b) would have more of the evidentiary material introduced in the initial filings and would otherwise be less formal. Thus, fewer filings and less process should be needed to support presiding officer decision-making in proceedings under § 2.1207(b) compared to proceedings under

§ 2.1207(a). In addition, proceedings under § 2.1207(b) would not be subject to the formal APA hearing requirements. Accordingly, for proceedings under § 2.1207(b), the NRC proposes a 110-day initial decision deadline for contentions submitted by the Standard Record Closure Date and a 90-day deadline for contentions submitted thereafter, which provides substantial margin for completing the hearing within the 18-month decision deadlines for these applications. The NRC has not developed a hypothetical timeline for proceedings subject to the § 2.1207(b) deadlines because the presiding officer has greater flexibility on how to structure these proceedings, as they are not subject to the formal APA hearing requirements.

Section 2.1207(c) would prescribe initial decision deadlines for highly expedited proceedings where the application references both (i) a categorical exclusion and (ii) an NRC approval providing finality in the adjudicatory proceeding on design information within the application (including a design certification or a manufacturing license). In such cases, the safety and environmental issues would almost entirely be resolved, and the potential adjudicatory issues should be narrow in scope. For this reason, and to support the highly expedited review schedules involved, the NRC proposes a 45-day initial decision deadline.[24] For contentions submitted by the deadline in § 2.309(b), the NRC could complete the evidentiary hearing in about 4 months from the *Federal Register* notice announcing the hearing opportunity, which would support the NRC's review schedules for applications in highly expedited proceedings.

Section 2.1207(d) would establish initial decision deadlines for operating reactor transfer proceedings and for highly expedited proceedings other than those covered by § 2.1207(d). Operating reactor transfer proceedings are treated more like highly expedited proceedings because (i) transfer proceedings are narrow in scope; (ii) there is a shorter time period for filing contentions in transfer proceedings (20 days from the *Federal Register* notice); (iii) the existing model milestones in part 2, appendix B, already establish an expedited hearing schedule for transfer proceedings; and (iv) operating

[24] The NRC is not proposing to establish a separate initial decision schedule for contentions submitted after the Standard Record Closure Date because the 45-day period is already short.

reactor transfer proceedings are currently subject to a standard 8-month schedule for an NRC decision on the application. Therefore, the NRC proposes to account for these distinctives by providing a 60-day initial decision deadline for operating reactor transfer proceedings. The NRC proposes to provide the same 60-day timeframes for highly expedited proceedings under § 2.1207(d) in light of the more focused nature of these applications, while recognizing that there is greater scope for potential contentions in these proceedings compared to highly expedited proceedings under § 2.1207(c).

Finally, while operating reactor transfers would be subject to a highly expedited schedule under § 2.1207(d), consistent with the nature of the review and the NRC's 8-month standard schedule for decision-making, other transfer proceedings (including for reactors under construction or in decommissioning) would be subject to the scheduling provisions in § 2.1207(e) because the NRC currently has a 12-month standard review schedule for these transfer applications. Also, experience has shown that adjudications for transfers of reactors in decommissioning are somewhat more complex than operating reactor transfers, a circumstance that was not contemplated when the model milestones for license transfer hearings were established.

Section 2.1207(e) would establish initial decision deadlines for other licensing proceedings. These would include proceedings on power reactor license renewal applications, 10 CFR part 52 combined license applications referencing a design certification, 10 CFR part 52 early site permit applications, license amendment applications, non-power reactor applications, and limited work authorization applications. The proposed initial decision deadlines reflect the NRC's consideration of the need for timeliness and efficiency pursuant to the ADVANCE Act and E.O. 14300, as well as the anticipated length and complexity of adjudication for the identified applications. Deadlines would be modestly shorter under § 2.1207(e) than under § 2.1207(b), which addresses the most complex applications with 18-month review schedules. Specifically, § 2.1207(e) would impose a 100-day initial decision deadline for contentions submitted by the Standard Record Closure Date and a 90-day deadline for contentions submitted

thereafter. As shown later in Table 4, these deadlines, combined with the timeframes for initial filings, should generally support NRC decision-making on applications within 12 months of docketing of the application (even when a later hearing is held on new or amended contentions). Many applications under § 2.1207(e), including power reactor license renewal applications, are currently subject to a general 12-month deadline for a final decision on the application. Some of the applications under § 2.1207(e) are currently subject to a general 18-month deadline for decision, but the NRC would aim to complete the review of these applications more quickly than 18 months if practical since they would generally be less complex and narrower in scope than other applications subject to an 18-month review deadline (e.g., 10 CFR part 52 combined license applications referencing a design certification). Also, E.O. 14300, Section 5(a), states that the E.O. 14300 deadlines are "maximum time periods," and that "the NRC shall adopt shorter deadlines tailored to particular reactor types or licensing pathways as appropriate." In addition, to the extent that new or amended contentions are not at issue because there are no substantial changes to the application during the review, these timelines would potentially support NRC decision-making within about 7 months of the docketing of the application if the NRC staff is able to finish its review in that period. Finally, as stated previously, the proposed 10 CFR 2.332(d) would require presiding officers in their scheduling orders to establish a schedule that, to the greatest extent practicable, will not extend past the NRC staff's scheduled date for completing its review of the particular application.

Tables 4 and 5 present information on how the overall hearing timelines support the NRC's decision-making schedules for different types of applications. Table 4 addresses applications covered by § 2.1207 other than highly expedited proceedings and Table 5 addresses highly expedited proceedings. These tables assume that (1) the presiding officer immediately proceeds to an evidentiary hearing when a contention is admitted, which the NRC intends to happen where practicable, and (2) the new or

amended contention is submitted one day after the Standard Record Closure Date (i.e., one day after the initial decision for the first hearing). These tables show:

- For uranium enrichment applications under § 2.1207(a) and the applications under § 2.1207(b), there is substantial margin to the 18-month standard decision-making deadlines for these applications. This margin accounts for potential delays when the evidentiary hearing phase does not immediately commence after contention admissibility. Also, while the appeals process is not within the scope of the E.O. 14300 deadlines in this proposed rule, the timelines in Table 4 would allow for the appeals process to be completed within the 18-month deadlines for applications under § 2.1207(a) and (b), even for an appeal taken of an initial decision in an evidentiary hearing held on a new or amended contention submitted one day after the Standard Record Closure Date.

- For highly expedited proceedings addressed by § 2.1202(c) and (d), the timeframes would support the potential completion of hearings around 4.5 to 5 months after publication of the *Federal Register* notice, which supports decision-making deadlines (or decision-making goals) for applications covered by highly expedited proceedings.

- For license transfer applications subject to § 2.1202(d), the timeframes would support the NRC's standard 8-month decision deadline for operating reactor transfer applications.

- For other proceedings (addressed by § 2.1202(e)), the timeframes would support NRC decision-making in about 12 months from publication of the *Federal Register* notice, which supports NRC decision-making for application reviews subject to a 12-month standard decision deadline, as well as some application reviews subject to an 18-month standard decision deadline that the NRC would attempt to complete sooner.

**Table 4**: Proposed Overall Hearing Timeline for Other than Highly Expedited Proceedings

| *Hearing Track* | *Contention Admissibility Decision – Days from FRN* | *Initial Decision Deadline – Days from Admission of Contention* | *Standard Record Closure Date (SRCD)* | *Contention Admissibility Decision (Contention After SRCD) – Days from Contention* | *Initial Decision Deadline – Days from Admission of New/Amended Contention* | *Sum* | *NRC's Current Standard Decision-Making Deadline*[25] |
|---|---|---|---|---|---|---|---|
| *Uranium Enrichment 2.1207(a)* | 127 days | 145 days | 272 days | 52 days | 110 days | 434 days | 18 months |
| *Most Complex Applications 2.1207(b)* | 127 days | 110 days | 237 days | 52 days | 90 days | 379 days | 18 months |
| *Operating Reactor License Transfer 2.1207(d)* | 77 days | 60 days | 137 days | 47 days | 60 days | 244 days | 8 months |
| *Other Proceedings 2.1207(e)* | 112 days | 100 days | 212 days | 52 days | 90 days | 354 days | 12 months for many types of applications, 18 months for some applications (but goal to reach decision sooner) |

[25] The NRC's current decision-making deadlines for the listed applications are subject to change.

**Table 5**: Overall Hearing Timeline for Highly Expedited Proceedings

| *Hearing Track* | *Contention Admissibility Decision – Days from FRN* | *Initial Decision Deadline – Days from Admission of Contention* | *Standard Record Closure Date (RCD)* | *NRC's Standard Decision-Making Deadline* |
|---|---|---|---|---|
| *Highly Expedited Proceeding with Design Finality and Categorical Exclusion 2.1207(c)* | 87 days | 45 days | 132 days | 6 months for MUR Amendments, 7 months for TSTF CLIIP Amendments |
| *Other Highly Expedited Proceedings 2.1207(d)* | 87 days | 60 days | 147 days | 6 months for MUR Amendments, 7 months for TSTF CLIIP Amendments |

- MUR = Measurement Uncertainty Recapture Uprates

- TSTF CLIIP = NRC-approved Technical Specifications Task Force traveler using the Consolidated Line-Item Improvement Process

- Table 5 does not show a separate timeline for hearings on new or amended contentions after the SRCD because these are not anticipated to be likely for highly expedited proceedings.

With the proposed revisions to §§ 2.1206 and 2.1207, the provisions in current §§ 2.1208 and 2.1209 are unnecessary and, therefore, §§ 2.1208 and 2.1209 would be removed and reserved. Also, minor conforming changes would be made to the initial decision provisions of § 2.1210—namely, the NRC proposes to modify an internal cross-reference and to change "an informal hearing" to "a hearing" in § 2.1210(a) to account for subpart L covering uranium enrichment proceedings subject to the APA's formal hearing requirements.

F. Change to 10 CFR 2.1213 Regarding Time to File a Stay Request

As explained earlier in this notice, the NRC proposes to modify 10 CFR 2.1213(c) to reduce the time period for filing an answer to a request to stay an NRC staff action from 10 days to 7 days.

G. Addition of New 10 CFR 2.1214 Regarding Transfer Proceedings to Reflect the Proposed Elimination of Subpart M

The NRC proposes to remove and reserve subpart M of part 2 because, as explained previously, the NRC proposes to conduct adjudications on transfer applications under subpart L rather than subpart M. However, there are certain provisions for transfer proceedings in subpart M that are distinct to those proceedings and should be retained. Therefore, the NRC proposes to add a new 10 CFR 2.1214 in subpart L to incorporate the provisions of current 10 CFR 2.1301, 2.1302, 2.1305, 2.1315, and 2.1316(b), with minor modifications to reflect the subpart L context in which these provisions would now reside.

H. Elimination of Sections II and III of Appendix B to Part 2

As stated previously, the NRC proposes to include strict deadlines for issuance of initial decisions for most adjudicatory proceedings under subpart L, while providing presiding officers with the flexibility to tailor hearing schedules within these deadlines.

The NRC also proposes to eliminate subpart M. As a conforming change, the NRC also proposes to eliminate the model milestones for hearings under subpart L and subpart M that are in Appendix B of part 2. Thus, Sections II and III of Appendix B would be removed and reserved.

**Appeals**

As discussed previously, in this proposed rule, the appeals process occurs outside of the scope of the fixed deadlines outlined in Section 5(a) of E.O. 14300 because the appeals process does not itself delay the issuance or effectiveness of a license. Nonetheless, the NRC is proposing to pursue broad changes to its contested hearing process, including revisions associated with appeals, in response to the ADVANCE Act and the general direction to streamline the public hearings process in Section 5(j) of E.O.14300. To streamline the overall process, the proposed changes to the appeals process primarily implement shortened timelines. Further, simple structural changes were made in § 2.311 to streamline the requirements and add clarity. These changes involve consolidation of the requirements in the section into paragraph (a), *Types of appeals covered under this section*; paragraph (b), *Timing of appeals and associated filings under this section*; paragraph (c), *Scope of appeals under this section*; and paragraph (d), *Commission decision timeline under this section*. These proposed structural changes primarily involve consolidating current § 2.311(d) into § 2.311(c) and consolidating current § 2.311(e) into § 2.311(a), (b), and (c). The following paragraphs discuss the NRC's proposed streamlining of the appeals process.

Specifically, the agency proposes to amend § 2.341(b)(1) to reduce the time for filing a petition for review of an agency decision with the Commission from 25 days to within 20 days after service of a full or partial initial decision by a presiding officer, and within 20 days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized. Section 2.341(b)(3) would be amended to allow any other party to the proceeding to file an answer supporting or opposing Commission review within 20 days after service of a petition for review and

reduce the period of time the petitioning party has to file a 5-page reply brief from 10 days to 7-days. This modest reduction in filing times is in keeping with the ADVANCE Act and the direction of E.O. 14300 to streamline processes. Similarly, a standard milestone for issuance of a final Commission decision within 60 days of service of the reply brief submitted under § 2.341(b)(3) is proposed in § 2.341(c)(1). This is a milestone, not a requirement, and acknowledges the Commission's authority to determine whether the complexity of the case may result in a longer timeframe for a final decision.

For interlocutory appeals under proposed 10 CFR 2.311(a)(1)-(4) and petitions for interlocutory review under 10 CFR 2.341(f)(2), the agency is proposing to limit the time for filing the appeal or petition from 25 days to 14 days after the presiding officer order or action at issue, with a 14-day opportunity after service of the appeal or petition for answers to the petition. The NRC proposes to provide less time for filings associated with requests for interlocutory appeals and petitions for interlocutory review than for filings associated with petitions for review under § 2.341(b) because petitions under § 2.341(b) would likely address more complex issues (e.g., those associated with an initial decision after an evidentiary hearing).

The agency proposes to modify Section 2.311, addressing interlocutory appeals on an order selecting hearing procedures, to require the moving party to file an appeal with the Commission no later than 7 days after the order—this should be sufficient time to address the comparatively simple matter of selection of hearing procedures. The NRC would similarly allot 7 days after service of the appeal for any party to file a brief in opposition. The regulatory language would further clarify that no opportunity for a reply brief in response to a brief in opposition in would be permitted.

Similar to the proposed new language included for appeals under § 2.341(b) in this proposed rule, the agency would revise current § 2.311(d) and add a new § 2.341(f)(3) to establish a standard milestone for issuance of a final Commission decision on the interlocutory appeal or petition for interlocutory review within 45 days of service of

the answer to the appeal or petition. This non-binding milestone would acknowledge the Commission's authority to determine whether the complexity of the case may result in a longer timeframe for a final decision. Taken together, these changes to the appeals process would help address the streamlining goals of the ADVANCE Act and E.O. 14300 while providing sufficient time for litigants to make their claims and for the Commission to fully consider the appeal.

As described previously, a hearing request would be required only to show standing to be granted in most licensing proceedings, and contention admissibility would be assessed separately. In addition to the interlocutory appeal opportunity afforded after the approval or denial of a request for hearing, the agency is proposing changes to 10 CFR 2.311(a) as well as paragraph (c) to provide an opportunity for an interlocutory appeal after the presiding officer has made an approval or denial under the contention admissibility requirements of 10 CFR 2.309 for contentions submitted by the applicable deadline in § 2.309(b), in proceedings where contention admissibility is assessed separately from whether the hearing request satisfies the requirements for standing. This interlocutory appeal opportunity is consistent with the overall proposed framework changes in part 2 and will provide for early resolution of issues by the Commission.

**Referred Rulings and Certified Questions**

In cases where the presiding officer identifies significant and novel legal or policy issues, or where prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding, the presiding officer has the discretion to refer its ruling to the Commission or certify a question to the Commission for disposition. To assure efficiency in this process, the agency is proposing to include language in § 2.323, paragraph (f)(1) that clarifies where practicable, the presiding officer should first rule on the matter in question and then seek Commission input in the form of a referred ruling, rather than certify a question to the Commission without issuing a ruling. This proposed change aims to minimize delays in the proceeding during the pendency of the Commission's review. Section 2.323, paragraph (g) would be adapted to clarify that

unless otherwise ordered, the referral of a ruling to the Commission does not stay the proceeding or extend the time for performance of any act.

**Reconsideration**

To shorten the process for motions for reconsideration in keeping with the streamlining and burden reduction efforts of the ADVANCE Act and E.O. 14300, the agency proposes to change the period to file a motion in Section 2.323, paragraph (e) from 10 days to 7 days; the period for responses would also be reduced from 10 days to 7 days. This change would be accompanied by a conforming change to § 2.323, paragraph (a)(2), that clarifies motions for reconsideration would not be subject to the general 10-day timeline for motions. Further changes would also be carried forward in Section 2.345, paragraph (a)(1) to reflect a 7-day deadline for filing a petition for reconsideration and a 7-day answer period. Similarly, changes to § 2.341(d) would reduce the filing timeline for petitions for reconsideration before the Commission to 7 days, with a 7-day answer period.

The agency anticipates these changes would provide clarity for the parties and serve overall efficiency efforts. Also, 7-day filing periods should be sufficient because reconsideration is only warranted when the existing regulatory standard of compelling circumstances applies, such as in cases of a clear, material error that could not be reasonably anticipated.

**Stays of Decisions and Application for a Stay**

Consistent with the streamlining efforts throughout part 2, the NRC is proposing a change to the § 2.342 timeline in paragraph (a) for an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review; the NRC proposes to change the filing deadline from 10 days after service of a decision or action of a presiding officer to 7 days. This change would be paired with a revision to paragraph (d) to clarify that the period for any party to file an answer supporting or opposing the granting of a stay is 7 days after service of an application for a stay.

Under existing § 2.1213, any application for a stay of the effectiveness of the NRC staff's action on a matter involved in a hearing must be filed with the presiding officer within 7 days of the issuance of the notice of the NRC staff's action under § 2.1202(a). While the agency is not proposing to change this timeline, the agency is proposing to reduce the corresponding timeline in § 2.1213(c) for any party and/or the NRC staff to file an answer supporting or opposing the granting of a stay from 10 days to 7 days after service of an application for a stay of the NRC staff's action.

These modest reductions should not significantly impact the burden on the parties to address the limited requirements and capped length of stay applications and associated answers. Further, these timeline changes are consistent with proposed changes for similar filings while advancing the directives of the ADVANCE Act and E.O. 14300.

**Delivery of Hard Copy Documents**

Under existing § 2.302, litigants must generally utilize the NRC's electronic filing system unless they (1) obtain an exemption from that requirement by demonstrating good cause to use a nonelectronic means of transmission for electronic documents on optical storage media of for paper documents, or else (2) file without an exemption a document containing electronic portions that may not be transmitted via the E-Filing system for reasons of security or electronic format. In recent years these circumstances have been rare; and the NRC anticipates they will arise even less frequently going forward. When an alternative to electronic transmission is used, however, § 2.306 automatically extends the timeframes in part 2 to account for the additional time it will take for nonelectronic transmission of the document. Collectively, these extensions could considerably delay a proceeding. Therefore, the NRC proposes to amend § 2.306(b) to direct the presiding officer to establish whether, and how long, the timeframes in part 2 should be extended in cases when nonelectronic transmission is allowed. Prior to this presiding officer order, the NRC proposes to retain the existing extensions of time in § 2.306. In considering the need to extend the timeframes to account for nonelectronic

service of documents, the presiding officer should ensure that the extensions will not cumulatively challenge timely completion of the adjudication.

## V. Specific Requests for Comments

The NRC is seeking advice and recommendations from the public on the proposed rule. The NRC is particularly interested in comments and supporting rationale from the public on the following:

**Overall Framework**

The NRC considered several alternative approaches for reforming its contested hearing process during the process for developing this proposed rule and is interested in the public's views on whether the proposed framework should be changed to reflect any of the following approaches. The NRC has the following questions on the overall framework employed in this proposed rule. When responding, please explain the basis for your response.

1) Should the NRC more broadly employ the oral argument process in existing subpart K of part 2 as an intermediate phase between the admission of the contention and the evidentiary hearing?[27]

2) Alternatively, should the NRC replace its current contention-based process with a notice-and-comment process in which petitioners would be required to show standing, could submit comments on the proposed licensing action, and would receive a decision on their comments without having to meet the contention admissibility criteria?

3) Should the hearing process applicable to licenses to construct uranium enrichment facilities apply to other proceedings, and if so, which ones?

4) How should the agency incorporate expedited processes for reactor designs that achieve Nth-of-a-kind deployment that support high-volume license reviews?

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[27] Under the existing subpart K oral argument process, the parties must provide a detailed written summary of their arguments and supporting facts and data regarding admitted contentions, after which the presiding officer conducts oral argument and decides whether an evidentiary hearing is necessary. An evidentiary hearing would be held only if (1) there are specific facts in genuine and substantial dispute, (2) the decision of the Commission is likely to depend on the resolution of that dispute, and (3) an adjudicatory hearing is likely to resolve the dispute. *See* 10 CFR 2.1113, 2.1115.

5) Does the public anticipate any unintended consequences from the proposed changes to the rule? If so, what are the potential unanticipated consequences, and how should they be addressed?

6) How can the agency ensure hearing participants' resources are not unnecessarily strained by implementation of the rule?

7) Should the regulations provide the presiding officer greater flexibility to determine deadlines while adhering to the overall timelines for hearing decisions described in this proposed rule? If so, how?

**Accelerating the Consideration of the Merits of Proposed Contentions**

For most licensing proceedings, the NRC proposes to modify its regulations to accelerate the submission and consideration of the merits of proposed contentions in the litigants' initial filings (i.e., proposed contentions, answers, and reply). Under this proposal, the applicant must (and the NRC staff may) address the merits of the proposed contentions, including submission of evidence and affidavits, in their answers to contentions, while the petitioner's reply could respond to these arguments on the merits with additional evidence. This proposal has the purpose of accelerating evidentiary hearings through the earlier submission of additional evidentiary material and related argument, and each party could better focus their initial testimony and position statements on admitted contentions since they would have a better understanding of the positions being taken on the admitted contentions. The primary benefit of the NRC's proposal is to shorten the evidentiary hearing schedule for admitted contentions.

However, the NRC recognizes that this proposal comes at a cost. For example, applicants (and to some degree the NRC staff) would expend more resources developing answers to proposed contentions even though experience indicates that the majority of contentions are not admitted. Likewise, petitioners would incur additional burden replying to merits arguments and evidence in those answers. In addition, since the NRC does not propose to raise the contention standard, the submission of this additional information would not play a role in the presiding officer's decision on whether

to admit a contention or otherwise narrow the scope of admitted issues for an evidentiary hearing. The NRC requests comment on the following. When responding, please explain the basis for your response.

1) Should the proposal to accelerate the submission and consideration of the merits of proposed contentions in the litigants' initial filings be adopted?

2) Should the proposal to accelerate the consideration of the merits of proposed contentions in the litigants' initial filings be adopted only for a limited set of proceedings where a significantly more expedited evidentiary hearing is of greater value, such as highly expedited proceedings and operating reactor license transfer proceedings?

3) Should the NRC modify the details of the proposal or consider alternatives to it?

**Specific Hearing Provisions**

In addition to the previous questions about the overall framework underlying the changes in the proposed rule, the Commission requests further engagement on the following specific hearing provisions in the proposed rule. When responding, please explain the basis for your response.

1) Do you agree with the agency's proposal to eliminate the NRC staff's obligation to produce a hearing file and eliminate the staff's obligation in most proceedings to provide mandatory disclosures under 10 CFR 2.336?

2) Do you have any input to provide on the agency's proposed changes to the reopening provisions?

3) Are there other ways the NRC should refine, but not raise, the contention admissibility requirements?

4) Do you agree with the agency's proposal to eliminate discretionary intervention under 10 CFR 2.309(e)?

5) Do you agree with the agency's proposal to bifurcate consideration of standing and contention admissibility? Is there a risk that bifurcating these considerations could result in additional delays and appeals?

6) Do you agree with the agency's proposals to revise 10 CFR 2.314 to require representation by an attorney in NRC proceedings unless a person represents themself in an individual capacity? In instances where a person does represent themself in an individual capacity, should the agency continue to afford non-attorneys greater latitude than attorneys?

**Discovery**

In the proposed rule, the NRC proposes to eliminate the staff's obligations to provide a hearing file and eliminate the staff's obligation to provide mandatory disclosures in most proceedings, including because that information is generally already available and readily accessible on the NRC's website and because there is a separate process for obtaining access to sensitive unclassified information within the possession of the NRC when such access is justified. The NRC is seeking comments on whether to also eliminate the mandatory disclosure obligations for other parties to NRC proceedings, such as the applicant and petitioners, on the basis that the already available information and the additional opportunity to seek sensitive unclassified information in the possession of the NRC provides sufficient information to the parties to support adjudication of admitted contentions in licensing proceedings. Please provide reasons for your response.

**Applicability of Rule Changes**

In accordance with E.O. 14300, the NRC plans to issue a final rule within 18 months of the issuance of the Executive Order. There will likely be ongoing adjudicatory proceedings when the final rule is issued. The NRC is seeking comments on the effect the final rule might have on ongoing proceedings. When responding, please explain the basis for your response.

1) Should the final rule be applied to ongoing proceedings and, if so, how?

2) Should a similar approach be used for this rule as was used in the last substantial change to the NRC's hearing regulations in 2012 (77 FR 46562; August 3, 2012), In that rule, the NRC stated:

> The new and amended requirements in the final rule will not be retroactively applied to presiding officer determinations and decisions issued prior to the effective date of the final rule …, nor will these requirements be retroactively imposed on participants, such that a participant would have to compensate for past activities that were accomplished in conformance with the requirements in effect at the time, but would no longer meet the new or amended requirements in the final rule. Further, in ongoing adjudicatory proceedings, if there is a dispute over an adjudicatory obligation or situation arising prior to the effective date of the new rule, the former rule provisions would be used.

However, the 2012 part 2 rule went on to state that the new requirements would "govern all obligations and disputes that arise after the effective date of the final rule. For example, if a Board issues a scheduling order before the effective date of the final rule that incorporates § 2.336(d), which currently requires parties to update their disclosures every 14 days, that obligation would change to every month on a day specified by the Board (unless the parties agree otherwise) once the effective date of the rule is reached."

3) Should the accelerated evidentiary hearing schedules and provisions be applied to contentions in ongoing proceedings for which the evidentiary hearing phase has not commenced?

4) Should provisions for initial filings and decisions on contentions be applied to proposed contentions in ongoing proceedings that are submitted after the effective date of the rule?

5) Should changes to the discovery provisions be applied to the next hearing file and mandatory disclosure updates in ongoing proceedings?

6) Should the proposal to eliminate non-attorney representation of other persons not apply to ongoing adjudicatory proceedings (i.e., apply only to adjudicatory proceedings for which the *Federal Register* notice announcing the opportunity to request a hearing is published after the effective date of the rule) or should this proposal apply to ongoing proceedings in a limited fashion (i.e., only to persons who have not yet filed a hearing request or intervention petition in the proceeding)?

## VI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the NRC certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies in the context of NRC adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do not fall within the definition of a small business found in Section 3 of the Small Business Act, 15 U.S.C. 632, within the small business standards set forth in 13 CFR part 121, or within the size standards established by the NRC (10 CFR 2.810). Some materials licensees are small businesses. Based upon 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.

## VII. Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is detailed in the following paragraphs of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES caption of this document.

To comply with Section 5(j) of E.O. 14300, the NRC is proposing to amend its regulations under 10 CFR part 2 to streamline its contested hearing process. This economic analysis is prepared in accordance with E.O. 12866, “Regulatory Planning and Review,”[28] and E.O. 14215, “Ensuring Accountability for All Agencies.”[29] E.O. 14215 requires independent agencies, such as, the NRC, to comply with E.O. 12866 and submit significant actions for Office of Information and Regulatory Affairs (OIRA) review.

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[28] See 58 FR 51735 (Oct. 4, 1993).

[29] See 90 FR 10447 (Feb. 24, 2025).

This analysis uses current contested hearing procedures for licensing proceedings under 10 CFR part 2 as the baseline and evaluates the changes proposed in this rule as the regulatory alternative and estimates the proposed rule's costs and cost savings for the first 5 years of implementation of the rule.[30] The proposed rule addresses many different types of applications, from applications to construct and/or operate reactors, to applications to construct and/or operate significant materials facilities, to applications for license renewals, amendments, and transfers, as well as applications associated with the proposed restart of reactors in decommissioning. Past experience suggests that, depending on the type of application, there is a greater or lesser probability that a hearing request will be filed or that a hearing request, if granted, will proceed to an evidentiary hearing. For example, previous 10 CFR part 52 early site permit and combined license applications for large reactors were nearly always the subject of a hearing request, while reactor license amendment applications are rarely challenged. Power reactor license renewal applications are often contested. Regarding the likelihood that an evidentiary hearing will be held, of the eight combined license applications for large reactors that were granted, an evidentiary hearing was held on four of these applications. There is a lower rate of holding evidentiary hearings for early site permit and reactor license renewal applications, but contested uranium recovery applications have led to a number of evidentiary hearings in the past 10 years. Past experience is to some degree informative, but any effort to extrapolate from this experience will be subject to substantial uncertainty. In addition, there is uncertainty in predicting how many applications of various types will be submitted or how many will be challenged.

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[30] The NRC staff relied on past or current costs to estimate the future costs of implementation of this proposed rule. For steps for which the staff has no data, the staff estimated the level of effort based on similar steps in the process or provided a qualitative assessment. In addition, the 5-year time horizon was chosen because it allows for a reasonably reliable prediction of the number of proceedings, which is one of the bases of this analysis. Furthermore, the estimates are based on average labor burdens and wage rates; actual outcomes may vary across applicants, NRC staff, and petitioners.

Recognizing this uncertainty, the NRC has attempted to develop numerical estimates for this regulatory analysis. The NRC expects an increase in the number of applications that are the subject of a hearing request because of an expected increase in the number of new reactor applications, up to nine applications per year for the next 5 years based on pre-application engagements. In addition, 18 power reactor license renewal applications are expected between 2026-2030.[31] Based on this information, the NRC has developed a rough estimate that 15 license proceedings per year will be the subject of a hearing request over the next 5 years. Based on data from the last 20 years, hearing requests have been granted in 60 percent of the proceedings in which they have been filed, so the NRC estimates that hearing requests will be granted in 9 of these 15 proceedings. Based, in part, on the number of new reactor applications expected and the relative frequency of evidentiary hearings for such applications, the NRC estimates that about 33 percent of the proceedings will lead to an evidentiary hearing (5 evidentiary hearings on average per 15 proceedings with hearing requests).

**Resource Projections for Next Five Years Based on Current Requirements**

Combining the previous estimated probabilities for the granting of hearing requests and holding of evidentiary hearings, with the available, albeit limited, internal data on resources expended on NRC hearings, the NRC anticipates that, on average, the NRC staff participating as a party in a contested proceeding would expend 4,150 hours per proceeding on average under the current requirements—this average accounts for proceedings where hearing requests are denied, those that proceed to an evidentiary hearing, and those where hearing requests are granted but do not proceed to an evidentiary hearing because the admitted contentions are resolved prior to hearing.

The NRC does not possess data on applicant resource expenditures in contested hearings, but the NRC expects an applicant's resources (in terms of hours) to generally be similar to the NRC staff's under the current rule because the applicant and NRC staff

[31] Notices of intent to submit license renewal applications are listed on the NRC's website at https://www.nrc.gov/reactors/operating/licensing/renewal/subsequent-license-renewal.html and https://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.

use similar personnel to accomplish similar tasks (answering hearing requests, developing 10 CFR 2.336 document disclosures, writing testimony, etc.). However, an applicant is not subject to a hearing file requirement like the staff is. Therefore, the NRC projects that applicant resources under current requirements are 3,925 hours per proceeding in which a hearing request is filed, a bit less than the NRC staff.

The NRC also does not possess data on petitioner resource expenditures in contested hearings. Petitioners vary widely in terms of their level of resources and how many contested issues they raise, but the NRC roughly estimates that, on average, a petitioner would expend about half the applicant's resources (1,950 hours) in a proceeding in which a hearing request is filed.

The NRC would also expend resources for presiding officers to conduct adjudicatory proceedings, where the presiding officer would be a three-member Licensing Board with support staff. In addition, the Office of Commission Appellate Adjudication (OCAA) would draft opinions for Commission consideration that address appeals of presiding officer decisions. In the absence of informative internal data, the NRC estimates (with substantial uncertainty) that there would be 4,700 hours of total NRC adjudicatory decision-making staff resources expended per proceeding in which a hearing request is submitted. This estimate is based on timeframes for adjudicatory decision-making under the current rules and the following additional assumptions:

- As stated above, the NRC assumes that evidentiary hearings are held in 33 percent of the proceedings in which a hearing request is filed.
- There would likely be one or more rounds of new or amended contentions submitted after a hearing request is filed.
- Presiding officer decisions on an initial hearing request and presiding officer decisions after an evidentiary hearing would likely be appealed, and there may be other petitions for review submitted during a proceeding.
- Given the higher volume of applications expected in the next 5 years, there would likely be overlap in Licensing Board member service for different proceedings

given the longer timeframes in the current process (i.e., over these longer timeframes, a member of one Licensing Board in active litigation would likely serve on multiple other Licensing Boards in active litigation).

**Resource Projections for Next Five Years Based on the Proposed Rule**

The proposed rule would make a number of changes that would affect the resources of litigants:

- For the initial filings (hearing requests/contentions, answers, and replies), the proposed rule would accelerate the schedule for filings and decisions thereon, which could save a modest amount of resources. However, participants might compensate for this to some degree by concentrating their resources during the shorter filing and decision periods. Otherwise, the proposed rule would require litigants to provide more information on the merits of proposed contentions in their initial filings, which would increase resource burdens somewhat at the initial filing stage.[32] However, accelerating the resolution of contested issues by including more information on the merits in initial filings should bring about a compensating burden reduction for those contentions that are admitted. In addition, accelerating decisions on standing would, in circumstances where standing is not demonstrated, save some litigant resources associated with the filing of contentions (e.g., save resources from oral argument on contention admissibility and, in some cases, save resources from the filing of answers and replies concerning contentions) and particularly save presiding officer resources regarding decisions on proposed contentions.

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[32] As explained earlier in this notice, the proposed changes would not be expected to substantially affect the burden associated with filing proposed contentions because they are consistent with the existing requirement in § 2.309(f)(1)(v) to factually support contentions with documentary and expert support, as well as case law on the relevance of expert qualifications to contention admissibility determinations. Also, many relevant documents would already be in ADAMS, and petitioners already routinely submit supporting documents, including signed expert declarations that detail the asserted qualifications of the expert. The NRC anticipates some additional burden associated with the filing of expert declarations in answers to contentions and in replies to answers, but in many cases experts are already supporting the litigants' preparation of their answers and replies, which would mitigate the additional burden somewhat.

- The proposed rule should save substantial resources during the intermediate phase, between admission of contentions and the evidentiary hearing. Currently, evidentiary hearings are not held until the staff completes its review—this has led to lengthy intermediate periods where parties periodically update their document disclosures (and for the staff, the hearing file) and engage in other litigation activities. Under the proposed rule, the NRC staff would not have to produce documents disclosures or a hearing file, and the much shorter intermediate period would limit the disclosure burdens of the other parties, as well as limit burdens from other litigation activities during the intermediate period.

- The proposed rule would also save substantial resources during the evidentiary hearing phase. The current subpart L model milestones envision an evidentiary hearing phase of about 9 months from a triggering event to an initial decision, and in practice the evidentiary hearing phase has on average taken substantially longer than this. Under the proposed rule, the evidentiary hearing phase would generally be limited to between 2 to 5 months, with 3 to 3.5 months being the set period for most proceedings. Also, the schedule could only be extended if unavoidable and extreme circumstances necessitate a delay. A much shorter evidentiary hearing phase will inherently limit the number of filings and other litigation activities and otherwise limit the resources that can be expended. Nonetheless, these resource savings would only accrue if an evidentiary hearing is held.

- The proposed rule would also eliminate representation of partnerships, corporations, unincorporated associations, and other persons by those who are not attorneys. This provision would help ensure that the NRC meets the accelerated schedules in the proposed rule, which should save resources as explained in the previous paragraphs. Otherwise, the NRC expects that petitioners who would employ non-attorney representatives under the current rule would shift their resources to employ attorneys as representatives. This matter is discussed in more detail later in this notice in the context of monetized projections of resources.

Considering these factors together, the NRC estimates that the NRC staff's resource burdens would drop from 4,150 hours to 3,050 hours per proceeding in which a hearing request is filed. Applicants would be expected to see a modest drop in resource burden from 3,925 hours per contested proceeding to 3,300 hours. The NRC staff would see a larger resource savings than the applicant because of the proposed elimination of the staff's document disclosure and hearing file obligations and because the staff would have a choice in most proceedings on whether, and to what extent, to address the merits and file supporting evidence in its answers to proposed contentions, but the applicant would be obligated to address the merits and file supporting evidence in most proceedings. Finally, the NRC estimates a modest drop in petitioner resource expenditures from 1,950 hours per contested proceeding to about 1,650 hours (about half of the applicant's resource expenditures).

For NRC adjudicatory decision-making staff, the NRC estimates that the resource burdens in proceedings where a hearing request is filed would drop from 4,700 hours per proceeding to 3,450 hours per proceeding. This estimated resource savings accounts for the following factors:

- Significantly reduced periods for decision-making would limit the resources that would be employed. For example, currently, there is about a 3.5-month period, on average, between submission of a contention and a ruling thereon. However, under the new proposed rules, this period would be reduced to about 1.5 to 2.5 months. In addition, as stated above, evidentiary hearings take 9 months or longer under current regulations, while most evidentiary hearings under the new proposed rule would take about 3 to 3.5 months total.

- However, savings from the reduced time periods would be limited by the following factors: (1) adjudicatory decision-making staff might compensate for shorter periods to some degree by concentrating their resources during the shorter decision periods, (2) there would less likely be overlap in time spent by Licensing Board members on multiple proceedings in active litigation at the same time because the litigation period

for each proceeding would be shorter, leading to less overlap in active litigation, and (3) evidentiary hearings are expected in only 33 percent of proceedings in which a hearing request is submitted, thereby diluting the average savings from a shorter evidentiary hearing period in the per-proceeding average.

- On the other hand, accelerating decision-making on standing would likely lead to resources savings in those proceedings for which standing is not demonstrated because there would be no need for the presiding officer to spend resources on the consideration of proposed contentions.

It is difficult to make accurate predictions regarding these factors, so the estimate of resource savings under the proposed requirements is subject to uncertainty.

**Monetized Projections for Next Five Years Based on Current and Proposed Requirements**

Building on the time-resources analysis discussed above, the NRC monetizes the time spent by the government staff, applicants, and petitioners on proceedings by applying fully loaded hourly wage rates.

- For the government staff, the NRC uses its own internal labor rate of $158 per hour.[33]

- For the applicants, who typically include utilities or corporate entities seeking licenses or related proceedings, the NRC bases the hourly rates on two data sources. For outside legal services, the NRC used the Fitzpatrick Matrix, which serves as a proxy for market rates for attorneys and paralegals doing complex federal litigation in the Washington, DC, area.[34] Since hearing proceedings would involve the use of outside

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[33] The NRC incremental labor rate of $158 differs from those developed under the NRC's license fee recovery program (10 CFR Part 170, "Fees for facilities, materials, import and export licenses, and other regulatory services under the Atomic Energy Act of 1954, as amended"). NRC labor rates for fee recovery purposes are appropriately designed for full-cost recovery of the services rendered and as such include non-incremental costs (e.g., overhead, administrative, and logistical support costs).

[34] U.S. Attorney's Office for the District of Columbia (USAO-DC), Civil Division, The Fitzpatrick Matrix, available at https://www.justice.gov/usao-dc/media/1395096/dl?inline. Beginning in 2022, USAO-DC replaced its previous USAO/Laffey Matrix with the Fitzpatrick Matrix. Federal agencies, including the Department of Justice, Federal Trade Commission, and Securities and

legal counsel, the Fitzpatrick Matrix is used to estimate the hourly cost of attorney and paralegal time. For 2024, the hourly rates for attorneys of varying experience levels ranged from $500 to $834, with a simple average of $734. The matrix also lists a single hourly rate for paralegals of $236. For non-legal labor categories, the NRC used wage data from the Bureau of Labor Statistics (BLS).[35] The estimated BLS mean hourly wage for relevant positions in 2024 are $70.95 for health and safety engineers, $67.32 for compliance officers, $66.12 for nuclear engineers, $65.10 for engineers, all others, and $41.45 for legal support workers. The NRC applied a multiplier of 2.4 to this BLS wage data to arrive at a fully loaded rate (e.g., $170.28 per hour for health and safety engineers)[36]; no such adjustment was made to the Fitzpatrick Matrix rates as these already reflect market-based rates. For the purposes of this analysis, the NRC assumes a staffing distribution for applicants of 50 percent for lawyers, 20 percent for nuclear engineers, 15 percent for paralegals, 5 percent for health and safety engineers, 5 percent for engineers, all others, and 5 percent for compliance staff. Applying these percentages to the Fitzpatrick Matrix data and the adjusted BLS data yields a blended applicant rate of about $459 per hour.

- For petitioners, which also include public-interest organizations and community groups, their wage rates are also derived from the two data sources mentioned previously, with a staffing distribution under the current regulations of 25 percent for lawyers, 20 percent for nuclear engineers, 20 percent for engineers, all others, 20 percent for legal support staff, 10 percent for health and safety engineers, and 5 percent for paralegals. This estimated staffing distribution accounts for the fact that some petitioners under current regulations employ non-attorneys as representatives

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Exchange Commission, have used the Laffey Matrix, and subsequently the Fitzpatrick Matrix, to estimate attorney fee rates or legal service costs in regulatory analyses or information collection activities.

[35] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, National Industry-Specific Occupational Employment and Wage Statistics, May 2024.

[36] The fully loaded wage rates include fringe and indirect management costs.

(typically, officers of the petitioning non-governmental organization (NGO)) while other petitioners do employ attorneys, although these may be assisted by officers of petitioning NGOs. NGO officers supporting litigation activities are represented by the legal support staff portion of the staffing distribution. Applying fully loaded hours rates to the BLS wage data only, this yields a blended petitioner rate of about $296 per hour under the current regulations. The NRC projects that the proposal to require attorneys to represent others (individuals or entities) will result in a modest shift in the overall staffing distribution toward more attorney and paralegal support and correspondingly less engineering support, with the effect limited to those petitioners who do not currently employ attorneys as representatives. Recognizing that affected petitioners will likely attempt to minimize costs from attorney resources, the NRC estimates a staffing distribution under the proposed rule provisions of 30 percent for lawyers, 15 percent for nuclear engineers, 15 percent for engineers, all others, 20 percent for legal support staff, 10 percent for health and safety engineers, and 10 percent for paralegals. Applying fully loaded hours rates to the BLS wage data only, this yields a blended petitioner rate of about $328 per hour under the proposed rule.

Using these wage rates, the time spent on proceedings is monetized by multiplying the hours per proceeding by the applicable wage rate and then by 15 proceedings annually. If the current regulations were to remain in place, the applicants would spend about $27.0 million (3,925 x $459 x 15) on proceedings per year, the NRC adjudicatory staff would spend about $11.1 million annually (4,700 hours x $158 x 15 proceedings), the NRC technical staff and attorneys would spend about $9.8 million annually (4,150 hours x $158 x 15), and petitioners would spend about $8.7 million annually (1,950 x $296 x 15). The combined spending on anticipated proceedings is about $56.7 million annually, undiscounted, if this rule is not implemented.

With this proposed rule, the applicants would spend about $22.7 million annually on proceedings (3,300 x $459 x 15), the NRC adjudicatory staff about $8.2 million annually (3,450 hours x $158 x 15 proceedings), the NRC technical staff and attorneys

about $7.2 million annually (3,050 hours x $158 x 15), and petitioners about $8.1 million annually (1,650 x $328 x 15). The applicants, government, and petitioners would spend about $46.2 million annually, undiscounted, if this rule is implemented.

**Cost Savings and Regulatory Accounting Presented in 2024 Base Year Dollars**

Over the 5-year analysis period (2026-2030), the proposed revisions to proceedings are projected to yield net savings for the public, the industry, and government. The combined net savings would generate cumulative undiscounted savings of $51.7 million (savings minus costs). Using 2024 as the base year, the net present value (NPV) of these net savings is $46.0 million, discounted at 3 percent, or $39.6 million, discounted at 7 percent. The projected annualized cost savings would be $9.8 million discounted at 3 percent, or $9.0 million discounted at 7 percent. Because the proposed rule would streamline existing hearing procedures, the cost of implementing this rule for the hearing participants is expected to be minimal and is not included in this analysis. However, the NRC would incur rulemaking costs for developing the final rule. This would include reviewing and addressing public comments on the proposed rule and writing the *Federal Register* notice for the final rule. The NRC estimates a total of 2,000 hours for developing the final rule, with the associated undiscounted cost being $320,000, or $300,000 (3 percent NPV) and $280,000 (7 percent NPV).

**Table 6**: Total Five-Year Cost and Savings: Government, Applicants, and Petitioners (2024 Dollars)

| *Attribute* | *In Millions ($)* | | |
|---|---|---|---|
| | *Undiscounted* | *3% NPV* | *7% NPV* |
| Applicants' Savings from Rule | 21.5 | 19.1 | 16.5 |
| NRC Adjudicatory Staff's Savings from Rule | 14.8 | 13.2 | 11.4 |
| NRC Technical Staff and Attorneys' Savings from Rule | 13.0 | 11.6 | 10.0 |
| NRC Costs to Prepare Final Rule Costs | (0.3) | (0.3) | (0.3) |
| Petitioners' Savings from Rule | 2.7 | 2.4 | 2.1 |
| Net Savings: | 51.7 | 46.0 | 39.6 |
| Annualized Savings: | | 9.8 | 9.0 |

The applicants, accounting for the largest share of cost savings, would save about $21.5 million over 5 years, undiscounted, with an NPV of $19.1 million discounted at 3 percent, or $16.5 million discounted at 7 percent.

**Table 7**: Total Five-Year Cost Savings: Applicants (2024 Dollars)

| *Year* | *Number of Proceedings* | *Cost of proceedings with existing regulations* | *Cost of proceedings with proposed rule* | *Cost savings due to the proposed rule* | *Cost savings 3% NPV ($ millions)* | *Cost savings 7% NPV ($ millions)* |
|---|---|---|---|---|---|---|
| | | *Undiscounted, in millions ($)* | | | | |
| 2026 | 15 | 27.0 | 22.7 | 4.3 | 4.1 | 3.8 |
| 2027 | 15 | 27.0 | 22.7 | 4.3 | 3.9 | 3.5 |
| 2028 | 15 | 27.0 | 22.7 | 4.3 | 3.8 | 3.3 |
| 2029 | 15 | 27.0 | 22.7 | 4.3 | 3.7 | 3.1 |
| 2030 | 15 | 27.0 | 22.7 | 4.3 | 3.6 | 2.9 |
| Total | 75 | 135.1 | 113.6 | 21.5 | 19.1 | 16.5 |

Additionally the NRC adjudicatory staff would realize savings of about $14.8 million over 5 years, undiscounted, with an NPV of $13.2 million discounted at 3 percent, or $11.4 million discounted at 7 percent.

**Table 8**: Total Five-Year Cost Savings: NRC Adjudicatory Staff (2024 Dollars)

| *Year* | *Number of Proceedings* | *Cost of proceedings with existing regulations* | *Cost of proceedings with proposed rule* | *Cost savings due to the proposed rule* | *Cost savings 3% NPV ($ millions)* | *Cost savings 7% NPV ($ millions)* |
|---|---|---|---|---|---|---|
| | | *Undiscounted, in millions ($)* | | | | |
| 2026 | 15 | 11.1 | 8.2 | 3.0 | 2.8 | 2.6 |
| 2027 | 15 | 11.1 | 8.2 | 3.0 | 2.7 | 2.4 |
| 2028 | 15 | 11.1 | 8.2 | 3.0 | 2.6 | 2.3 |
| 2029 | 15 | 11.1 | 8.2 | 3.0 | 2.6 | 2.1 |
| 2030 | 15 | 11.1 | 8.2 | 3.0 | 2.5 | 2.0 |
| Total | 75 | 55.7 | 40.9 | 14.8 | 13.2 | 11.4 |

During the same period, the NRC technical staff and attorneys would save about $13.0 million over 5 years, undiscounted, with an NPV of $11.6 million discounted at 3 percent, or $10.0 million discounted at 7 percent.

**Table 9**: Total Five-Year Cost Savings: NRC Technical Staff and Attorneys (2024 Dollars)

| *Year* | *Number of Proceedings* | *Cost of proceedings with existing regulations* | *Cost of proceedings with proposed rule* | *Cost savings due to the proposed rule* | *Cost savings 3% NPV ($ millions)* | *Cost savings 7% NPV ($ millions)* |
|---|---|---|---|---|---|---|
| | | *Undiscounted, in millions ($)* | | | | |
| 2026 | 15 | 9.8 | 7.2 | 2.6 | 2.5 | 2.3 |
| 2027 | 15 | 9.8 | 7.2 | 2.6 | 2.4 | 2.1 |
| 2028 | 15 | 9.8 | 7.2 | 2.6 | 2.3 | 2.0 |
| 2029 | 15 | 9.8 | 7.2 | 2.6 | 2.2 | 1.9 |
| 2030 | 15 | 9.8 | 7.2 | 2.6 | 2.2 | 1.7 |
| Total | 75 | 49.2 | 36.1 | 13.0 | 11.6 | 10.0 |

The petitioners' savings total about $2.7 million, undiscounted, with an NPV of $2.4 million discounted at 3 percent, or $2.1 million discounted at 7 percent.

**Table 10**: Total Five-Year Cost Savings: Petitioners (2024 Dollars)

| *Year* | *Number of Proceedings* | *Cost of proceedings with existing regulations* | *Cost of proceedings with proposed rule* | *Cost savings due to the proposed rule* | *Cost savings 3% NPV ($ millions)* | *Cost savings 7% NPV ($ millions)* |
|---|---|---|---|---|---|---|
| | | *Undiscounted, in millions ($)* | | | | |
| 2026 | 15.0 | 8.7 | 8.1 | 0.5 | 0.5 | 0.5 |
| 2027 | 15.0 | 8.7 | 8.1 | 0.5 | 0.5 | 0.4 |
| 2028 | 15.0 | 8.7 | 8.1 | 0.5 | 0.5 | 0.4 |
| 2029 | 15.0 | 8.7 | 8.1 | 0.5 | 0.5 | 0.4 |
| 2030 | 15.0 | 8.7 | 8.1 | 0.5 | 0.5 | 0.4 |
| Total | 75.0 | 43.3 | 40.6 | 2.7 | 2.4 | 2.1 |

Overall, this proposed rule is considered to be a deregulatory action and would reduce burden for both the agency and hearing participants by streamlining the hearing process. These deregulatory actions would translate into net savings with an NPV of $39.6 million over the five-year analysis horizon, or $9.0 million annually in 2024 dollars at a 7 percent discount rate. In addition to the quantified resource savings discussed previously, the NRC notes that the proposed milestones for Commission appellate review would lead to a potential qualitative benefit to adjudicatory participants through a more efficient appeals process.

In addition to this analysis, OIRA requires agencies to report results as a perpetual stream (perpetuity) once a rule is implemented. The perpetual stream has annualized savings of about $9.0 million. Because this analysis is conducted at the proposed rule stage, these figures reflect potential entries into the OIRA Regulatory Accounting Module once the rule is implemented, provided they remain unchanged at the final rule stage.

## VIII. Backfitting and Issue Finality

The NRC has determined that the backfit rule and issue finality provisions do not apply to this rule because the amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I and are not inconsistent with any

applicable issue finality provision in 10 CFR part 52. Therefore, a backfit analysis or issue finality assessment is not required for this rule.

## IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

## X. National Environmental Policy Act

This rule involves an amendment to 10 CFR part 2, and thus qualifies as an action for which no environmental review is required under the categorical exclusion set forth in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rulemaking.

## XI. Paperwork Reduction Act

This proposed rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995. Existing collections of information were approved by the Office of Management and Budget, approval numbers 3150-0021, 3150-0151, and 3150-0155.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

## XII. Regulatory Planning and Review

### Executive Order (E.O.) 12866

The Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is not a significant regulatory action under E.O. 12866. More can be found in section VII, of this document, “Regulatory Analysis.”

**Review Under E.O.s 14154, 14192, 14215, and 14300**

The NRC has examined this proposed rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154, “Unleashing American Energy,” E.O. 14192, “Unleashing Prosperity Through Deregulation,” E.O. 14215 “Ensuring Accountability for All Agencies,” and E.O. 14300, “Ordering the Reform of the Nuclear Regulatory Commission.” This proposed rule is considered an E.O. 14192 deregulatory action. We estimate that this rule generates $9.0 million in annualized costs savings at a 7% discount rate, discounted relative to year 2024, over a perpetual time horizon. Details on the estimated costs of this proposed rule can be found in section VII, of this document, “Regulatory Analysis.”

**Review Under E.O. 14270**

Executive Order 14270, “Zero-Based Regulatory Budgeting to Unleash American Energy,” requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the Atomic Energy Act of 1954, as amended (AEA), the Energy Reorganization Act of 1974, as amended (ERA), and the Nuclear Waste Policy Act of 1982, as amended (NWPA); (2) not statutorily required; and (3) not part of the NRC’s permitting regime. The NRC determined that the regulatory changes proposed in this rule are for hearing processes that are required by statute and are part of the NRC’s regulatory permitting scheme authorized by the AEA, ERA, or NWPA. Therefore, the NRC views this rulemaking to be outside the scope of Executive Order 14270 and did not insert conditional sunset dates for the regulatory changes in this proposed rule.

**XIII. Availability of Guidance**

The NRC will not be issuing guidance for this rulemaking because the rulemaking would specify requirements for adjudications, and how these requirements apply would

be highly dependent on the specific claims made by litigants and the specific circumstances associated with these claims.

## XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

| DOCUMENT | ADAMS ACCESSION NO. / WEB LINK / *FEDERAL REGISTER* CITATION / LEGAL PUBLICATION |
|---|---|
| Executive Order 12866, "Regulatory Planning and Review," October 4, 1993 | 58 FR 51735 |
| Executive Order 14215, "Ensuring Accountability for All Agencies," February 24, 2025 | 90 FR 10447 |
| Executive Order 14154, "Unleashing American Energy," January 29, 2025 | 90 FR 8353 |
| Executive Order 14192, "Unleashing Prosperity Through Deregulation," February 6, 2025 | 90 FR 9065 |
| Executive Order 14270, "Zero-Based Regulatory Budgeting to Unleash American Energy," April 15, 2025 | 90 FR 15643 |
| Executive Order 14300, "Ordering the Reform of the Nuclear Regulatory Commission," May 29, 2025 | 90 FR 22587 |
| Final Rule – Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process, August 11, 1989 | 54 FR 33168 |
| Final Rule – Changes to Adjudicatory Process, January 14, 2004 | 69 FR 2182 |
| Final Rule – Amendments to Adjudicatory Process Rules and Related Requirements, August 3, 2012 | 77 FR 46562 |
| Final Rule – Licenses, Certifications, and Approvals for Nuclear Power Plants, August 28, 2007 | 72 FR 49352 |
| Lincoln County, Nevada; Denial of Petition for Rulemaking, December 28, 2007 | 72 FR 73676 |
| Memorandum and Order (CLI-92-4), Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), February 26, 1992 | 35 NRC 69 (ML16357A727) |
| Memorandum and Order (LBP-01-31), Duke Energy Corporation (McGuire Nuclear Station, Units 1 and 2; Catawba Nuclear Station, Units 1 and 2), October 31, 2001 | 54 NRC 242 (ML030420224) |

| | |
|---|---|
| Memorandum and Order (CLI-04-25) Louisiana Energy Services, L.P. (National Enrichment Facility), August 18, 2004 | 60 NRC 223 (ML060740237) |
| Memorandum and Order (CLI-06-10), USEC Inc. (American Centrifuge Plant), April 3, 2006 | 63 NRC 451 (ML081510741) |
| Memorandum and Order (CLI-06-16), Andrew Siemaszko, June 2, 2006 | 63 NRC 708 (ML081510741) |
| Memorandum and Order (CLI-06-17) Nuclear Management Company (Palisades Nuclear Plant), June 23, 2006 | 63 NRC 727 (ML081510741) |
| Memorandum and Order (LBP-09-6), U.S. Department of Energy (High-Level Waste Repository), May 11, 2009 | 69 NRC 367 (ML12202B178) |
| Memorandum and Order (CLI-10-2), Progress Energy Florida, Inc. (Levy County Nuclear Power Plant, Units 1 and 2), January 7, 2010 | 71 NRC 27 (ML13056A621) |
| Memorandum and Order (CLI-12-3), Entergy Nuclear Generation Company and Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), February 22, 2012 | 75 NRC 132 (ML14192B367) |
| Memorandum and Order (CLI-12-14), Virginia Electric and Power Company (North Anna Power Station, Unit 3), June 7, 2012 | 75 NRC 692 (ML14192B367) |
| Memorandum and Order (CLI-19-11), Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station), December 17, 2019 | 90 NRC 258 (ML20241A307) |
| Memorandum and Order (CLI-20-6), Southern Nuclear Operating Company, Inc. (Vogtle Electric Generating Plant, Unit 3), June 15, 2020 | 91 NRC 225 (ML21168A338) |
| Memorandum and Order (CLI-20-16), Nuclear Development, LLC (Bellefonte Nuclear Plant, Units 1 and 2), December 17, 2020 | 92 NRC 511 (ML21280A391) |
| Order of the Secretary, Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 and 4), Nos. 50-250-SLR/50-251-SLR, June 29, 2018 | ML18180A185 |
| Deukmejian v. NRC, D.C. Cir., December 31, 1984 | 751 F.2d 1287 |
| National Whistleblower Center v. Nuclear Regulatory Commission, D.C. Cir., April 11, 2000 | 208 F.3d 256 |
| Citizens Awareness Network, Inc. v. U.S., 1st Cir., December 10, 2004 | 391 F.3d 338 |
| Federal Administrative Adjudication Outside the Administrative Procedure Act, Michael Asimow, 2019 | https://www.acus.gov/sites/default/files/documents/Federal%20Administrative%20Adj%20Outside%20the%20APA%20-%20Final.pdf |

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at https://www.regulations.gov under Docket ID NRC-2025-1501. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) navigate to the docket folder (NRC-2025-1501); 2) click the “Subscribe” link; and 3) enter an email address and click on the “Subscribe” link.

**List of Subjects**

**10 CFR Part 2**

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Environmental protection, Freedom of information, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

**10 CFR Part 51**

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

**10 CFR Part 52**

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Issue finality, Limited work authorization, Manufacturing license, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

**10 CFR Part 54**

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power

plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping 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 NRC is proposing to amend 10 CFR parts 2, 51, 52, and 54:

**PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE**

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

**Authority:** Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note).

2. In § 2.4, revise the definitions of “Contested proceeding” and “Potential party” and add new definitions for “Highly expedited proceeding” and “Standard Record Closure Date” to read as follows:

**§ 2.4 Definitions.**

* * * * *

*Contested proceeding* means—

* * * * *

(3) A proceeding in which a hearing request, petition for leave to intervene, or contention in opposition to an application for a license or permit (a) has been granted or is pending before the Commission, or (b) is not pending before the Commission but is the subject of a motion for leave to file the hearing request, petition for leave to intervene, or contention after the prescribed filing deadline established in § 2.309(b) of this part.

* * * * *

*Highly expedited proceeding* means a proceeding for (a) a licensee-initiated amendment for a measurement uncertainty recapture uprate; (b) a licensee-initiated amendment relying on an NRC-approved Technical Specifications Task Force traveler using the Consolidated Line-Item Improvement Process; or (c) any other proceeding that the Commission designates as a highly expedited proceeding.

* * * * *

*Potential party* means any person who has requested, or who may intend to request, a hearing or petition to intervene in a hearing under 10 CFR part 2, other than hearings conducted under Subpart J of 10 CFR part 2.

* * * * *

*Standard Record Closure Date* means the standard date for closure of the record in a proceeding. The Standard Record Closure Date for a proceeding is the date on which an initial decision would be scheduled to issue in accordance with this part in the hypothetical situation where a contention is (a) filed by the deadline in § 2.309(b) of this part; (b) admitted by the presiding officer in accordance with a due date for decision specified in this part (with the contention, answer, and reply being filed by the deadlines specified in this part); and (c) adjudicated at an evidentiary hearing phase that immediately proceeds upon the admission of the contention. The calculated Standard Record Closure Dates for different types of proceedings are in § 2.1207.

* * * * *

3. In § 2.101, revise paragraph (f)(5) to read as follows:

**§ 2.101 Filing of application.**

* * * * *

(f)* * *

(5) The Director, Office of Nuclear Material Safety and Safeguards, will cause to be published in the *Federal Register* a notice of docketing which identifies the State and location of the proposed waste disposal facility and will give notice of docketing to the governor of that State and other officials listed in paragraph (f)(3) of this section and will,

as soon as practicable after docketing the application, publish in the *Federal Register* a notice under § 2.105 offering an opportunity to request a hearing to the applicant and other potentially affected persons.

4. In § 2.104, revise paragraphs (a) and (b)(4) to read as follows:

**§ 2.104 Notice of hearing.**

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the *Federal Register*. The notice must be published at least 15 days, and in the case of an application concerning a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility, at least 30 days, before the date set for hearing in the notice.[1] In addition, in the case of a notice of hearing announcing an opportunity to request a hearing, petition to intervene, and/or file contentions, the notice must be published in the *Federal Register* as soon as practicable after the NRC has docketed the application. If the Commission decides, under § 2.101(a)(2), to determine the acceptability of the application based on its technical adequacy as well as completeness, the notice must be issued as soon as practicable after the application has been tendered.

(b)* * *

(4) The date by which requests for hearing, petitions to intervene, and contentions must be filed; the Standard Record Closure Date for the proceeding specified in § 2.1207; and the additional filing deadline information required by § 2.309(b)(5);

* * * * *

---

[1] If the notice of hearing concerning an application for a limited work authorization, construction permit, early site permit, or combined license for a facility of the type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility does not specify the time and place of initial hearing, a subsequent notice will be published in the *Federal Register* which will provide at least 30 days notice of the time and place of that hearing. After this notice is given, the presiding officer may

reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing at least 30 days notice.

5. In § 2.105, revise the introductory text of paragraph (b) and revise paragraph (d) to read as follows:

**§ 2.105 Notice of proposed action.**

* * * * *

(b) Except for notices subject to the requirements of § 50.91, if a notice of proposed action is published in the *Federal Register*, that notice must be published in the *Federal Register* as soon as practicable after the NRC has docketed the application. A notice of proposed action published in the *Federal Register* (including one subject to the requirements of § 50.91) will set forth:

* * * * *

(d) The notice of proposed action will provide that, within the time period provided under § 2.309(b), the applicant may file a request for a hearing; and any person whose interest may be affected by the proceeding may file a request for a hearing or a petition for leave to intervene if a hearing has already been requested. In addition, the notice must state the Standard Record Closure Date for the proceeding specified in § 2.1207 and state the additional filing deadline information required by § 2.309(b)(5).

* * * * *

6. In § 2.306 revise the introductory text of paragraph (b) to read as follows:

**§ 2.306 Computation of time.**

* * * * *

(b) If the presiding officer grants a request for an exemption from the electronic transmission requirements under § 2.302(h) or anticipates that information subject to § 2.302(g)(2) will not be transmitted electronically, the presiding officer must issue an order specifying whether additional time should be added to prescribed periods for taking action to account for physical delivery of a notice or other document and if so, how much time should be added. In considering the need for additional time to account for physical delivery, the presiding officer should ensure that the added time will not

cumulatively challenge timely completion of the adjudication. Prior to the presiding officer issuing such an order, whenever a participant has the right or is required to do some act within a prescribed period after service of a notice or other document upon him or her, no additional time is added to the prescribed period except in the following circumstances:

* * * * *

7. In § 2.307, revise paragraph (a) to read as follows:

**§ 2.307 Extension and reduction of time limits; delegated authority to order use of procedures for access by potential parties to certain sensitive unclassified information.**

(a) Except as otherwise provided by law, the time fixed or the period of time prescribed for an act that is required or allowed to be done at or within a specified time, may be extended or shortened either by the Commission or the presiding officer for good cause, or by stipulation approved by the Commission or the presiding officer. For purposes of this section, to demonstrate good cause a person must show extraordinary circumstances beyond their control; however, if the proposed extension of time has the demonstrated potential to cause the proceeding to extend beyond the staff's scheduled date for completing its review of the particular application as documented in a written communication to the applicant, then a person must show unavoidable and extreme circumstances to demonstrate good cause.

* * * * *

8. In § 2.309:

a. Revise paragraph (a);

b. Revise paragraph (b)(3), and add paragraph (b)(5);

c. Revise introductory text of paragraph (c) and paragraphs (c)(1) and (2), and add paragraphs (c)(5), (c)(6), and (c)(7);

d. Remove and reserve paragraph (e);

e. Revise the introductory text of paragraph (f)(1), and paragraphs (f)(1)(iv), (f)(1)(vi), and (f)(2);

f. Revise paragraph (g);

g. Remove the word “containing” and add in its place the word “and” in the first sentence of paragraph (h)(1);

h. Revise paragraph (i);

i. Revise paragraph (j)(1), and add paragraph (j)(3); and

j. Add paragraph (k).

The additions and revisions read as follows:

**§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.**

(a) *General requirements.* Any person whose interest may be affected by a proceeding and who desires to participate as a party must file a written request for hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

(1) For proceedings for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits (other than a proceeding under subpart J of this part; a proceeding for granting a license to construct and operate a uranium enrichment facility; or a proceeding on a denial of an application), the Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section. If the request/petition is granted, the Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request/petition will then determine whether the requestor/petitioner has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section.

(2) For all other proceedings, the Commission, presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request for hearing and/or petition for leave to intervene, will grant the request/petition if it determines that the requestor/petitioner has standing under the provisions of paragraph (d) of this section and has proposed at least one admissible contention that meets the requirements of paragraph (f) of this section.

(3) In ruling on the request for hearing/petition to intervene submitted by petitioners seeking to intervene in the proceeding on the HLW repository, the Commission, the presiding officer, or the Atomic Safety and Licensing Board shall also consider any failure of the petitioner to participate as a potential party in the pre-license application phase under subpart J of this part in addition to the factors in paragraph (d) of this section.

(4) If a request for hearing or petition to intervene is filed in response to any notice of hearing or opportunity for hearing, the applicant/licensee shall be deemed to be a party.

(b)* * *

(3) In proceedings for which a *Federal Register* notice of agency action is published (other than a proceeding covered by paragraphs (b)(1) or (b)(2) of this section):

(i) The request or petition and the contentions must be filed within sixty (60) days from the date of publication of the notice in the *Federal Register* in a proceeding for the grant of a license to construct and operate a uranium enrichment facility or a proceeding under § 52.103 of this chapter;

(ii) The request or petition must be filed within thirty (30) days, and the contentions must be filed within sixty (60) days, from the date of publication of the notice in the *Federal Register* in a proceeding for:

(A) The grant of a construction permit, an initial operating license, or an initial combined license under 10 CFR parts 50 or 52 for a production or utilization facility of

the type described in §§ 50.21(b) or 50.22, where the application does not reference a design certification or manufacturing license;

(B) The grant of a license to construct and/or operate a uranium recovery or fuel cycle facility under part 40 or part 70 (other than a license to construct and operate a uranium enrichment facility);

(iii) The request or petition and the contentions must be filed within thirty (30) days from the date of publication of notice in the *Federal Register* in a highly expedited proceeding or a proceeding on a denial of an application;

(iv) The request or petition must be filed within thirty (30) days, and the contentions must be filed within forty-five (45) days, from the date of publication of the notice in the *Federal Register*, in a proceeding not identified in paragraphs (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section.

* * * * *

(5) The *Federal Register* notices referenced in paragraphs (b)(1) through (b)(3) of this section must state the Standard Record Closure Date for the proceeding specified in § 2.1207, along with the applicable filing deadlines for hearing requests, intervention petitions, and contentions (including those filed after the § 2.309(b)(1) through (b)(3) deadlines), and the applicable deadlines for the associated answers and replies.

(c) *Filings after the deadline; submission of motion for leave to file hearing request, intervention petition, or new or amended contentions—*

(1) *Submission of motion for leave to file and determination by presiding officer.* To submit a hearing request, intervention petition, or new or amended contention after the deadline in paragraph (b) of this section, a participant must submit a motion for leave to file the request, petition, or contention after the deadline, and the request, petition, or contention must accompany the motion for leave to file. Hearing requests, intervention petitions, and new or amended contentions filed after the deadline in paragraph (b) of this section will not be entertained and will not be considered pending before the Commission unless the associated motion for leave to file is granted upon a

determination by the presiding officer that a participant has demonstrated good cause by showing that:

(i) The information upon which the hearing request, intervention petition, or contention is based was not previously available;

(ii) The information upon which the hearing request, intervention petition, or contention is based is materially different from information previously available; and

(iii) The motion for leave to file and associated hearing request, intervention petition, or contention have been submitted within thirty (30) days of the availability of the subsequent information, except that the filing period is twenty (20) days from the availability of the subsequent information for license transfer or highly expedited proceedings.

(2) *Applicability of §§ 2.307 and 2.323.*

(i) Section 2.307 applies to requests to change a filing deadline (requested before or after that deadline has passed) based on reasons not related to the substance of the filing.

(ii) Section 2.323 does not apply to motions for leave to file hearing requests, intervention petitions, or new or amended contentions filed after the deadline in paragraph (b) of this section.

* * * * *

(5)(i) The applicant/licensee, the NRC staff, and other parties to a proceeding may file an answer to a motion for leave to file and associated hearing request, intervention petition, or contention within 20 days of service of the motion and associated request, petition, or contention, except that the filing period is 15 days for license transfer or highly expedited proceedings. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer.

(ii) Except in a proceeding under § 52.103 of this chapter, the participant who filed the motion for leave to file and associated request, petition, or contention may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

(6) The presiding officer's decision on a motion for leave to file and associated request, petition, or contention must be issued within 25 days after service of the reply (or within 25 days after the deadline for a reply, if no reply is filed). This deadline may be extended only in accordance with the requirements of paragraph (j)(3) of this section.

(7) The pendency of a motion for leave to file submitted under this paragraph does not affect the NRC's authority to take licensing or regulatory actions.

* * * * *

(e) [Reserved]

(f)* * *

(1) Contentions must be set forth with particularity. Each contention must:

* * * * *

(iv) Demonstrate that the issue raised in the contention is material to the findings the NRC must make to support the action that is involved in the proceeding, including specifying the legal requirement on which the contention is based;

* * * * *

(vi) In a proceeding other than one under § 52.103 of this chapter, provide sufficient information to show that a genuine dispute exists with the applicant/licensee on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. This information also must clearly indicate whether the petitioner is disputing the adequacy of the information in the application, is asserting that the

application fails to contain information on a relevant matter as required by law, or both; and

* * * * *

(2) Contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to a petitioner. On issues arising under the National Environmental Policy Act, participants shall file contentions based on the applicant's environmental report. Participants may file new or amended environmental contentions after the deadline in paragraph (b) of this section (e.g., based on a draft or final NRC environmental impact statement, environmental assessment, or any supplements to these documents) if the associated motion for leave to file complies with the requirements in paragraph (c) of this section.

* * * * *

(g) *Selection of hearing procedures.* A request for hearing, petition for leave to intervene, and/or proposed contentions may, except in a proceeding under § 52.103 of this chapter, also address the selection of hearing procedures, taking into account the provisions of § 2.310.

* * * * *

(i) *Answers to hearing requests, intervention petitions, and contentions filed by the deadline in paragraph (b) of this section; replies to answers*. For a hearing request, intervention petition, or proposed contention filed by the deadline in paragraph (b) of this section—

(1) The applicant/licensee, the NRC staff, and other parties to a proceeding may file an answer to the request, petition, or proposed contention. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer. Answers must be filed within the following timeframes:

(i) In a proceeding on a license to construct and operate a uranium enrichment facility, a proceeding under subpart J of this part, a proceeding under § 52.103 of this chapter, or a proceeding on a denial of an application, the answer must be filed within 25 days after service of the request or petition.

(ii) In all other proceedings:

(A) The answer to a hearing request or an intervention petition must be filed within 10 days after service of the request or petition; and

(B) The answer to a proposed contention must be filed within 25 days after service of the contention, except that the filing period is 20 days for license transfer or highly expedited proceedings.

(2) The participant who filed the hearing request, intervention petition, or proposed contention may file a reply to an answer, except that there is no opportunity to file a reply in a proceeding under § 52.103 of this chapter or to file a reply to an answer to a hearing request or intervention petition in a highly expedited proceeding. The reply must be filed within 7 days after service of that answer.

* * * * *

(j) *Decision on request/petition/contention filed by the deadline in paragraph (b) of this section.*

(1) Except in a proceeding under § 52.103 of this chapter or a proceeding under subpart J of this part, the presiding officer shall issue a decision on a hearing request, intervention petition, or proposed contention filed by the deadline in paragraph (b) of this section, within the following timeframes:

(i) In a proceeding on a license to construct and operate a uranium enrichment facility or a proceeding on a denial of an application, the decision must be issued within 35 days after service of the reply to the answers to the request or petition (or within 35 days after the deadline for a reply, if no reply is filed).

(ii) In a highly expedited proceeding:

(A) The decision on a hearing request or an intervention petition must be issued within 20 days after service of the answers to the request or petition (or within 20 days after the deadline for answers, if no answer is filed); and

(B) The decision on a proposed contention must be issued within 30 days after service of the reply to the answers to the contention (or within 30 days after the deadline for a reply, if no reply is filed).

(iii) In all other proceedings:

(A) The decision on a hearing request or an intervention petition must be issued within 20 days after service of the reply to the answers to the request or petition (or within 20 days after the deadline for a reply, if no reply is filed); and

(B) The decision on a proposed contention must be issued within 35 days after service of the reply to the answers to the contention (or within 35 days after the deadline for a reply, if no reply is filed), except that this period is 30 days for license transfer proceedings.

* * * * *

(3) The decision deadlines in paragraph (j)(1) of this section may be extended only if extraordinary circumstances prevent the presiding officer from issuing a decision by the deadline. At the earliest practicable opportunity, the presiding officer must notify the Commission and the litigants of the delay and the extraordinary circumstances that necessitate the delay.

(k) Additional requirements for certain proceedings. The following requirements apply to all proceedings other than a proceeding on a license to construct and operate a uranium enrichment facility, a proceeding under subpart J of this part, a proceeding under § 52.103 of this chapter, or a proceeding on a denial of an application:

(1) The petitioner must with its contentions file all referenced documents and/or affidavits supporting the factual assertions in the contention. Any affidavits must describe the individual’s knowledge of the facts alleged or expertise in the discipline(s) appropriate to the issues raised.

(2) The applicant in its answer to proposed contentions must, and the NRC staff may, address the merits of the proposed contentions in addition to addressing the contention admissibility criteria.[1] Replies to these answers may address factual arguments in the answers with additional evidence, except that replies may not expand or modify the scope of the proposed contention or provide factual support that could have been provided in the original contention but was not. In addressing the merits of proposed contentions, answers and replies must be accompanied by all referenced documents and/or affidavits supporting the factual assertions in the answer or reply that address the merits of the proposed contention. Any affidavits must describe the individual's knowledge of the facts alleged or expertise in the discipline(s) appropriate to the issues raised.

(3) For documents available in ADAMS, the participant may provide the ADAMS Accession number for the document in lieu of filing the document.

(4) For a copyright document, the participants must submit only relevant portions of the document that would constitute fair use.

[1] In a highly expedited proceeding, however, the staff is expected to address the merits of proposed contentions in their answer to the extent practical to support the accelerated review and hearing schedule.

9. In § 2.310, remove and reserve paragraphs (c), (d), (g), and (h) and revise paragraphs (a) and (e) to read as follows:

**§ 2.310 Selection of hearing procedures.**

* * * * *

(a) Except as determined through the application of paragraphs (b) through (f) of this section, proceedings for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits subject to 10 CFR parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70 and 72 must be conducted under the procedures of subpart L of this part.

* * * * *

(c) [Reserved]

(d) [Reserved]

(e) Proceedings on applications for a license or license amendment to expand the spent nuclear fuel storage capacity at the site of a civilian nuclear power plant must be conducted under the procedures of subpart L of this part, unless a party requests that the proceeding be conducted under the procedures of subpart K of this part.

* * * * *

(g) [Reserved]

(h) [Reserved]

* * * * *

10. Revise § 2.311 to read as follows:

**§ 2.311 Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.**

(a) *Types of appeals covered under this section.* An order of the presiding officer, or if a presiding officer has not been designated, of the Chief Administrative Judge, or if he or she is unavailable, of another administrative judge, or of an administrative law judge with jurisdiction under § 2.318(a), may be appealed to the Commission with respect to:

(1) A request for hearing;

(2) A petition to intervene;

(3) A request for admission of contentions submitted by the applicable deadline in § 2.309(b) in a proceeding subject to § 2.309(j)(1)(ii)-(iii), for which a petitioner has been granted a hearing request or intervention petition;

(4) A request for access to sensitive unclassified non-safeguards information (SUNSI), including, but not limited to, proprietary, confidential commercial, and security-related information, and Safeguards Information (SGI). An appeal to the Commission may also be taken from an order of an officer designated to rule on information access issues; or

(5) An order selecting a hearing procedure.

(b) *Timing of appeals and associated filings under this section.*

(1) Appeals under paragraphs (a)(1)-(4) of this section must be made as specified by the provisions of this section, within 14 days after the service of the order. The appeal must be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within 14 days after service of the appeal. The supporting brief and any answer must conform to the requirements of § 2.341(c)(3). No reply briefs will be permitted. No other appeals from rulings on requests for hearing are allowed.

(2) Appeals under paragraph (a)(5) of this section must be filed with the Commission no later than seven (7) days after issuance of the order selecting a hearing procedure. Any party who opposes the appeal may file a brief in opposition to the appeal within seven (7) days after service of the appeal. No reply briefs will be permitted.

(c) *Scope of appeals under this section.*

(1) An order described in paragraphs (a)(1)-(4) of this section is appealable:

(i) By the requestor/petitioner on the question as to whether the request or petition should have been granted or (in a proceeding subject to § 2.309(j)(1)(ii)-(iii)) a contention should have been admitted.

(ii) By a party other than the requestor/petitioner on the question as to whether the request for hearing or petition to intervene should have been wholly denied, or (in a proceeding subject to § 2.309(j)(1)(ii)-(iii)), whether the admitted contentions should have been wholly denied; or

(iii) By a party other than the requestor/petitioner on the question as to whether the request for access to the information described in paragraph (a)(4) of this section should have been denied in whole or in part. However, such a question with respect to SGI may only be appealed by the NRC staff, and such a question with respect to SUNSI may be appealed only by the NRC staff or by a party whose interest independent of the proceeding would be harmed by the release of the information.

(2) An order described in paragraph (a)(5) of this section may be appealed by any party on the question as to whether the selection of the particular hearing procedures was in clear contravention of the criteria set forth in § 2.310.

(d) *Commission decision timeline under this section.* The Commission will endeavor to issue a final decision on an appeal under this section within 45 days of service of the answer to the appeal unless, in the judgment of the Commission, the complexity of the case necessitates additional time for a decision.

11. In § 2.312, revise paragraph (b) to read as follows:

**§ 2.312 Notice of hearing.**

* * * * *

(b) The time and place of hearing will be fixed in accordance with the scheduling requirements of this part and any proceeding-specific Commission orders. Within these limits, the presiding officer will give due regard for the convenience of the parties or their representatives, the nature of the proceeding, and the public interest.

* * * * *

12. In § 2.313, revise paragraph (a) to read as follows:

**§ 2.313 Designation of presiding officer, disqualification, unavailability, and substitution.**

(a) *Designation of presiding officer.* The Commission may provide in the notice of hearing that one or more members of the Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or a named officer who has been delegated final authority in the matter, shall be the presiding officer. The Commission alone shall designate the presiding officer in a hearing conducted under subpart O of this part. If the Commission does not designate the presiding officer for a hearing under subparts G, J, K, L, or N of this part, then the Chief Administrative Judge shall issue an order designating an Atomic Safety and Licensing Board appointed under Section 191 of the Atomic Energy Act of 1954, as amended, or an administrative law

judge appointed by the Commission pursuant to 5 U.S.C. 3105, for a hearing conducted under subparts G, J, K, L, or N of this part.

*  *  *  *  *

13. In § 2.314, revise paragraph (b) to read as follows:

**§ 2.314 Appearance and practice before the Commission in adjudicatory proceedings.**

*  *  *  *  *

(b) *Representation.* An individual may appear in an adjudication on his or her own behalf or by an attorney-at-law. All other persons may be represented only by an attorney-at-law. A party may be represented by an attorney-at-law if the attorney is in good standing and has been admitted to practice before any Court of the United States, the District of Columbia, or the highest court of any State, territory, or possession of the United States. Any person appearing in a representative capacity shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, and facsimile number and email address, if any; the name and address of the person or entity on whose behalf he or she appears; and the basis of his or her eligibility as a representative.

*  *  *  *  *

14. In § 2.323, revise paragraphs (a), (c), (e), (f)(1), and (g) to read as follows:

**§ 2.323 Motions.**

(a) *Scope and general requirements*—(1) *Applicability to § 2.309(c).* Section 2.309 motions for leave to file hearing requests, intervention petitions, or new or amended contentions after the deadline in § 2.309(b) (including motions to reopen the record that relate to such filings after the deadline) are not subject to the requirements of this section. For the purposes of this section, the term “all motions” includes any motion except § 2.309 motions for leave to file hearing requests, intervention petitions, or new or amended contentions after the deadline in § 2.309(b) (and motions to reopen the record that relate to such filings after the deadline).

(2) *Presentation and disposition*. All motions must be addressed to the Commission or other designated presiding officer. All motions, other than motions submitted in highly expedited proceedings, motions for summary disposition, or motions for reconsideration, must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises. Motions submitted in highly expedited proceedings must be made no later than seven (7) days after the occurrence or circumstance from which the motion arises. All written motions must be filed with the Secretary and served on all parties to the proceeding.

* * * * *

(c) *Answers to motions.*

(1) For all written motions, other than motions submitted in highly expedited proceedings, motions for summary disposition, or motions for reconsideration, a party may file an answer in support of or in opposition to the motion within ten (10) days after service of the motion, or other period as determined by the Secretary, the Assistant Secretary, or the presiding officer. Answers to motions in highly expedited proceedings must be submitted within seven (7) days after service of the motion.

(2) An answer to a motion submitted under paragraph (c) of this section may be accompanied by affidavits or other evidence.

(3) The moving party has no right to reply, except as permitted by the Secretary, the Assistant Secretary, or the presiding officer. Permission may be granted only in compelling circumstances, such as where the moving party demonstrates that it could not reasonably have anticipated the arguments to which it seeks leave to reply.

* * * * *

(e) *Motions for reconsideration*. Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid. A motion must be filed within seven (7) days of the action for which

reconsideration is requested, and responses to the motion must be submitted within seven (7) days after service of the motion. The motion and any responses to the motion are limited to ten (10) pages.

(f) *Referral and certifications to the Commission*. (1) If, in the judgment of the presiding officer, the presiding officer's decision raises significant and novel legal or policy issues, or prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding, then the presiding officer may promptly refer the ruling to the Commission. This standard also applies to questions certified to the Commission. To minimize delays in the proceeding, to the extent practicable a presiding officer should refer a ruling to the Commission rather than certify a question. The presiding officer shall notify the parties of the referral or certification either by announcement on-the-record or by written notice if the hearing is not in session.

* * * * *

(g) *Effect of filing a motion, filing a petition, referring of a ruling or certifying of a question to the Commission.* Unless otherwise ordered, neither the filing of a motion, the filing of a petition for certification, nor the referral of a ruling or certification of a question to the Commission stays the proceeding or extends the time for the performance of any act.

* * * * *

15. In § 2.326, revise paragraph (a)(2) and add paragraph (e) to read as follows:

**2.326 Motions to reopen.**

(a)* * *

(2) The motion must address a significant safety issue or, in a proceeding where a categorical exclusion does not apply, a significant environmental issue; and

*** * * * ***

(e) For a proceeding subject to § 2.1207, the record for an adjudicatory proceeding will close on the Standard Record Closure Date for the proceeding. If before the Standard Record Closure Date, the presiding officer enters an order closing the

record following an evidentiary hearing, the record for the adjudicatory proceeding will close on the date specified in the order. On the date the record closes for an adjudicatory proceeding, if there are any contentions that either remain pending or are subject to a motion for leave to file under § 2.309(c), the record will remain open only with respect to the issues raised by those contentions.

16. In § 2.329, revise paragraph (a) to read as follows:

**§ 2.329 Prehearing conference.**

(a) *Option to conduct a prehearing conference.* The Commission or the presiding officer may direct the parties or their counsel to appear at a specified time and place for a conference or conferences before an evidentiary hearing.

* * * * *

17. In § 2.332, revise paragraphs (a), (b), and (d) to read as follows:

**§ 2.332 General case scheduling and management.**

(a) *Scheduling order.* As soon as practicable (and no later than 10 days) after admitting a contention, the presiding officer shall, after consulting with the parties, enter a scheduling order that establishes time limits for concluding discovery, the schedule for any written or oral components of the evidentiary hearing, and the date when the presiding officer expects to issue an initial decision. For proceedings under subpart L of this part, the scheduling order must comply with the scheduling requirements in subpart L and in paragraph (d) of this section.

(b) *Model milestones.* For enforcement proceedings, in developing the scheduling order under paragraph (a) of this section, the presiding officer shall utilize the applicable model milestones in appendix B to this part as a starting point. The presiding officer shall make appropriate modifications based upon all relevant information, including but not limited to, the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

*  *  *  *  *

(d) *When to proceed to evidentiary hearing; effect of NRC staff's schedule on scheduling order.* For proceedings subject to the requirements of § 2.1207(a)-(e):

(1) Within seven days of the admission of a contention:

(i) The NRC staff will notify the presiding officer and the other parties whether the staff will participate as a party on the contention and, if so, whether the staff is able to take final positions on the matters in controversy; and

(ii) The NRC staff and the applicant will notify the presiding officer and the other parties whether the staff or applicant intend to seek dismissal of a contention. The 7-day notification regarding dismissal of a contention must address, as applicable, the NRC staff or applicant’s intent to seek dismissal, but the motion to dismiss may be submitted later.

(2) The presiding officer must immediately proceed with the evidentiary hearing phase of the proceeding on an admitted contention unless either:

(i) The NRC staff decides to participate as a party but is not yet able to take final positions on the matters in controversy; or

(ii) The NRC staff or applicant intend to seek dismissal of the admitted contention.

(3) If the NRC staff decides to participate as a party on an admitted contention but is not yet able to take final positions on the matters in controversy, the NRC staff must prioritize its resources to put itself in a position to provide testimony on the contention at the earliest practicable time and notify the presiding officer and the other parties when the staff is ready to do so. To the greatest extent practicable, the presiding officer should establish a schedule that will not extend past the NRC staff’s scheduled date for completing its review of the particular application as documented in a written communication to the applicant.

18. Revise § 2.334 to read as follows:

**§ 2.334 Implementing hearing schedule for proceeding.**

(a) The presiding officer must take all appropriate actions to maintain the hearing schedule established in accordance with § 2.332 and other applicable regulations in this part.

(b) A hearing schedule deadline may only be extended upon a finding that the criteria for extending a time limit in § 2.307(a) are met. An applicable deadline in subpart L to this part for completing the evidentiary hearing (i.e., the deadline for issuance of an initial decision) may only be extended upon a finding that unavoidable and extreme circumstances necessitate the delay.

(c) The presiding officer must provide written notification to the Commission any time during the course of the proceeding when it appears that the issuance of the initial decision will be delayed beyond the time specified in the hearing schedule established under § 2.332(a). The notification must include an explanation of the reasons for the projected delay and a description of the actions, if any, that the presiding officer proposes to take to avoid or mitigate the delay.

19. In § 2.336, revise the introductory text of paragraph (a), add paragraphs (a)(4) and (5), and revise paragraph (b) and the last sentence in paragraph (d). The additions and revisions read as follows:

**§ 2.336 General Discovery**

(a) Except for proceedings conducted under subparts G and J of this part or as otherwise ordered by the Commission, the presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding, all parties, other than the NRC staff, to any proceeding subject to this part shall, within twenty (20) days of the issuance of the order admitting a contention (or the order granting a demand for hearing upon a denial of an application) and without further order or request from any party, disclose and provide:

* * * * *

(4) The disclosure obligations in paragraph (a) of this section do not include drafts of documents unless the draft has been circulated among the parties or publicly disclosed.

(5) In complying with the requirements of paragraph (a) of this section in a proceeding on a denial of an application, references to “contentions” and “admitted contentions” must be taken to mean the contested issues outlined in the order granting the demand for hearing.

(b)(1) In a proceeding on a denial of an application, the NRC staff must, within 20 days of the issuance of the order granting a demand for hearing and without further order or request from any party, disclose or provide to the extent available (but excluding those documents for which there is a claim of privilege or protected status):

(i) All documents (including documents that provide support for, or opposition to, the application) that both support the NRC staff's review of the application that is the subject of the proceeding and are relevant to the contested issues outlined in the order granting the demand for hearing;

(ii) Any NRC staff documents that both represent the NRC staff's determination on the application that is the subject of the proceeding and are relevant to the contested issues outlined in the order granting the demand for hearing; and

(iii) A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(2) The disclosure obligations in this paragraph do not include drafts of documents unless the draft has been circulated among the parties or publicly disclosed.

* * * * *

(d) * * * The duty to update disclosures relevant to an admitted contention ends when the presiding officer issues a decision resolving the contention or thirty days prior to the start of an evidentiary hearing, whichever occurs first; however, termination of the duty to update disclosure does not relieve parties of their continuing obligation to keep the presiding officer and litigants informed of relevant new developments in a proceeding.

* * * * *

20. In § 2.340, revise paragraphs (i)(2), (j)(4), and (k)(2) to read as follows:

**§ 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.**

* * * * *

(i)* * *

(2) Notwithstanding the pendency of a motion for leave to file under § 2.309(c), a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(j)* * *

(4) Notwithstanding the pendency of a motion for leave to file under § 2.309(c), a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(k)* * *

(2) Notwithstanding the pendency of a motion for leave to file under § 2.309(c), a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

21. In § 2.341, revise paragraphs (b)(1) and (3), (c)(1), and (d), revise the introductory text of paragraph (f)(2), and add paragraph (f)(3) to read as follows:

**§ 2.341 Review of decisions and actions of a presiding officer.**

* * * * *

(b)(1) Within 20 days after service of a full or partial initial decision by a presiding officer, and within 20 days after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part, a party may file a petition for review with the Commission on the grounds specified in paragraph (b)(4) of this section. Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of an agency action.

*  *  *  *  *

(3) Any other party to the proceeding may, within 20 days after service of a petition for review, file an answer supporting or opposing Commission review. This answer may not be longer than 25 pages and should concisely address the matters in paragraph (b)(2) of this section to the extent appropriate. The petitioning party may file a reply brief within seven (7) days of service of any answer. This reply brief may not be longer than 5 pages.

*  *  *  *  *

(c)(1) The Commission will endeavor to issue a final decision on a petition for review submitted under paragraph (b) of this section within 60 days of service of the reply to the answer to the petition unless, in the judgment of the Commission, the complexity of the case necessitates additional time for a decision. If within 120 days after the filing of a petition for review the Commission does not grant the petition, in whole or in part, the petition is deemed to be denied, unless the Commission, in its discretion, extends the time for its consideration of the petition and any answers to the petition.

*  *  *  *  *

(d) Petitions for reconsideration of Commission decisions granting or denying review in whole or in part will not be entertained. A petition for reconsideration of a Commission decision after review may be filed within seven (7) days, but is not necessary for exhaustion of administrative remedies. However, if a petition for reconsideration is filed, the Commission decision is not final until the petition is decided. Any petition for reconsideration will be evaluated against the standard in § 2.323(e). Answers to a petition for reconsideration may be filed by an interested party within seven (7) days of service of the petition, and no reply to an answer is permitted.

*  *  *  *  *

(f)*  *  *

(2) The Commission may, in its discretion, grant interlocutory review at the request of a party despite the absence of a referral or certification by the presiding

officer. A party may file a petition for interlocutory review within fourteen (14) days of the presiding officer decision or action for which review is requested, and any other party to the proceeding may, within fourteen (14) days after service of the petition for interlocutory review, file an answer supporting or opposing Commission review. No reply to an answer is permitted. The petition and answer must be in the form prescribed in paragraph (b) of this section and must be treated in accordance with the general provisions of this section. The petition for interlocutory review will be granted only if the party demonstrates that the issue for which the party seeks interlocutory review:

* * * * *

(3) The Commission will endeavor to issue a final decision on a petition submitted under paragraph (f)(2) of this section within 45 days of service of an answer to the petition unless, in the judgment of the Commission, the complexity of the case necessitates additional time for a decision.

22. In § 2.342, revise paragraphs (a) and (d) to read as follows:

**§ 2.342 Stays of decisions.**

(a) Within seven (7) days after service of a decision or action of a presiding officer, any party to the proceeding may file an application for a stay of the effectiveness of the decision or action pending filing of and a decision on a petition for review. This application may be filed with the Commission or the presiding officer, but not both at the same time.

* * * * *

(d) Within seven (7) days after service of an application for a stay under this section, any party may file an answer supporting or opposing the granting of a stay. This answer may not be longer than ten (10) pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section to the extent appropriate. Further replies to answers will not be entertained. Filing of and service of an answer on the other parties must be by the same method, e.g., electronic or facsimile transmission, mail, as the method for filing the application for the stay.

*  *  *  *  *

23. In § 2.345, revise paragraphs (a)(1) and (b) to read as follows:

**§ 2.345 Petition for reconsideration.**

(a)(1) Any petition for reconsideration of a final decision must be filed by a party within seven (7) days after the date of the decision.

*  *  *  *  *

(b) A petition for reconsideration must demonstrate a compelling circumstance, such as the existence of a clear and material error in a decision, which could not have been reasonably anticipated, which renders the decision invalid. The petition must state the relief sought. Within seven (7) days after a petition for reconsideration has been served, any other party may file an answer in opposition to or in support of the petition.

*  *  *  *  *

24. Revise § 2.700 to read as follows:

**§ 2.700 Scope of subpart G.**

The provisions of this subpart apply to and supplement the provisions set forth in subpart C of this part with respect to enforcement proceedings initiated under subpart B of this part unless otherwise agreed to by the parties, proceedings for initial applications for construction authorization for high-level radioactive waste repository noticed under §§ 2.101(f)(8) or 2.105(a)(5), proceedings for initial applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area, and any other proceeding as ordered by the Commission. If there is any conflict between the provisions of this subpart and those set forth in subpart C of this part, the provisions of this subpart control.

25. Revise § 2.901 to read as follows:

**§ 2.901 Scope of subpart I.**

This subpart applies, as applicable, to all proceedings under subparts G, J, K, L, and N of this part.

26. Revise § 2.1103 to read as follows:

**§ 2.1103 Scope of subpart K.**

(a) Except as otherwise provided by paragraph (b) of this section, the provisions of this subpart, together with subpart C and applicable provisions of subparts G and L of this part, govern adjudicatory proceedings on the following applications filed after January 7, 1983, if a party requests that the proceeding be conducted under this subpart:

(1) An application for a license or license amendment under parts 50 or 52 of this chapter, to expand the spent fuel storage capacity at the site of a civilian nuclear power plant, through the use of high density fuel storage racks, fuel rod compaction, the transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, the construction of additional spent nuclear fuel pool capacity or dry storage capacity, or by other means; or

(2) An application for a license under part 72 of this chapter to store spent nuclear fuel in an independent spent fuel storage installation located at the site of a civilian nuclear power reactor.

(b) This subpart shall not apply to the first application for a license or license amendment to expand the spent fuel storage capacity at a particular site through the use of a new technology not previously approved by the Commission for use at any other nuclear power plant. This subpart shall not apply to proceedings on applications for transfer of a license issued under part 72 of this chapter.

27. Revise § 2.1200 as follows:

**§ 2.1200 Scope of this subpart.**

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted for the grant, renewal, licensee-initiated amendment, termination, or transfer of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70, and 72 of this chapter (except as otherwise

provided in accordance with § 2.310), and adjudicatory proceedings on enforcement actions conducted under this subpart in accordance with § 2.310.

28. In § 2.1202, revise paragraphs (a)(1), (a)(3), and (b)(2) to read as follows:

**§ 2.1202 Authority and role of NRC staff.**

(a)* * *

(1) An application to construct and/or operate a production or utilization facility of the type described in §§ 50.21(b) or 50.22 of this chapter or a testing facility as defined in § 50.2 of this chapter (including an application for a limited work authorization under § 50.10 of this chapter, or an application for a combined license under subpart C of 10 CFR part 52);

* * * * *

(3) An application for a license to construct and operate a uranium enrichment facility;

* * * * *

(b)* * *

(2) Within seven (7) days of the issuance of the order granting requests for hearing/petitions to intervene or admitting contentions, the NRC staff shall notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff shall notify the presiding officer and the parties and identify the contentions on which it wishes to participate as a party.

* * * * *

29. Revise § 2.1203 to read as follows:

**§ 2.1203 Prohibition on discovery.**

Except as otherwise permitted by subpart C of this part, a party may not seek discovery from any other party or the NRC or its personnel, whether by document production, deposition, interrogatories or otherwise.

30. Revise § 2.1205 to read as follows:

**§ 2.1205 Summary disposition.**

(a) Unless the presiding officer or the Commission directs otherwise, motions for summary disposition may be submitted to the presiding officer by any party no later than 30 days before the scheduled date for the filing of initial written testimony. The motions must be in writing and must include a written explanation of the basis of the motion. The moving party must attach a short and concise statement of material facts for which the moving party contends that there is no genuine issue to be heard. Motions for summary disposition must be served on the parties and the Secretary at the same time that they are submitted to the presiding officer.

(b) Any other party may serve an answer supporting or opposing the motion within fifteen (15) days after service of the motion.

(c) The presiding officer shall issue a determination on each motion for summary disposition no later than twenty (20) days after the filing of answers. In ruling on motions for summary disposition, the presiding officer shall apply the standards for summary disposition set forth in subpart G of this part.

31. Revise § 2.1206 to read as follows:

**§ 2.1206 Process and Schedule for Hearing.**

(a)(1) Upon consideration of the contested matters raised in the admitted contention(s) and after consulting with the parties, the presiding officer must issue a scheduling order in accordance with § 2.332 that determines which written filings in paragraph (b)(1) of this section the parties will be permitted to make and the schedule for these filings, the schedule for motions for cross-examination, whether and when to hold an oral hearing, and the schedule for issuing an initial decision. The schedule for issuing an initial decision must comply with the requirements of § 2.332 and (as applicable) § 2.1207. If the presiding officer initially determines to hold an oral hearing but later determines an oral hearing is unnecessary, the presiding officer may amend the scheduling order to remove the oral hearing and should inform the parties at the earliest practical opportunity.

(2) Hearings in a proceeding for the grant of a license to construct and operate a uranium enrichment facility must comply with the procedures in the Administrative Procedure Act for “on the record” hearings.

(b)(1) The presiding officer will determine which of the following written filings may be submitted by the parties and the schedule for these filings:

(i) Initial testimony, position statements, and supporting exhibits;

(ii) Rebuttal testimony, position statements, and supporting exhibits;

(iii) Motions in limine and motions to strike;

(iv) Written briefing and/or written responses to questions from the presiding officer;

(v) Proposed questions for the presiding officer to ask the witnesses; and

(vi) Proposed findings of fact and conclusions of law.

(2) Written testimony may be submitted in affidavit or question-and-answer form. If statements of position and proposed findings of fact and conclusions of law are both permitted, then the statements of position may be filed in the form of proposed findings of fact and conclusions of law. Proposed questions need not be filed with any other party. The presiding officer may allow oral motions in limine or motions to strike in lieu of (or in addition to) written filings.

(c)(1) Participants may designate and present their own witnesses to the presiding officer. Testimony for the NRC staff will be presented only by persons designated by the Executive Director for Operations or his or her designee for that purpose.

(2) The presiding officer may formulate and ask oral or written questions to the participants that the presiding officer considers appropriate to develop an adequate record.

(3) The presiding officer may accept written testimony from a person unable to appear at an oral hearing, and may request that person to respond in writing to questions.

(4) Unless cross-examination is permitted in accordance with § 2.1204, only the presiding officer will be permitted to pose questions to witnesses. If the presiding officer permits the parties to submit proposed questions under paragraph (b) of this section, the proposed questions may be propounded at the discretion of the presiding officer. All questions must be kept by the presiding officer in confidence until they are either propounded by the presiding officer, or until issuance of the initial decision on the issue being litigated. The presiding officer shall then provide all proposed questions to the Commission's Secretary for inclusion in the official record of the proceeding.

(d) In a proceeding for the grant of a license to construct and operate a uranium enrichment facility and in a proceeding on a denial of an application:

(1) A transcribed oral hearing must be held unless all parties jointly agree to dispense with an oral hearing; and

(2) Each party must be permitted:

(i) To file written testimony, a position statement, and supporting exhibits;

(ii) To submit rebuttal evidence and argument; and

(iii) To file proposed findings of fact and conclusions of law.

32. Revise § 2.1207 to read as follows:

**§ 2.1207 Schedule for Issuance of Initial Decision.**

With the exception of enforcement proceedings and proceedings on denials of applications, the initial decision must be issued within the applicable timeframe prescribed by paragraphs (a) through (e) of this section.

(a) In a proceeding for the grant of a license to construct and operate a uranium enrichment facility, the initial decision must be issued within the following timeframes, except to the extent that unavoidable and extreme circumstances necessitate a delay.

(1) For hearing requests, intervention petitions, and contentions submitted by the Standard Record Closure Date, the initial decision must be issued within 145 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) For hearing requests, intervention petitions, and contentions submitted after the Standard Record Closure Date, the initial decision must be issued within 110 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(3) The Standard Record Closure Date in a proceeding under paragraph (a) of this section is 272 days after the *Federal Register* notice announcing the opportunity to request a hearing.

(b) In a proceeding for the grant of a construction permit, an initial operating license, or an initial combined license under 10 CFR parts 50 or 52 for a production or utilization facility of the type described in §§ 50.21(b) or 50.22 of this chapter (where the application does not reference a design certification or manufacturing license), or the grant of a license to construct and/or operate a uranium recovery or fuel cycle facility under parts 40 or 70 of this chapter (other than a license to construct and operate a uranium enrichment facility), the initial decision must be issued within the following timeframes, except to the extent that unavoidable and extreme circumstances necessitate a delay.

(1) For contentions submitted by the Standard Record Closure Date, the initial decision must be issued within 110 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) For contentions submitted after the Standard Record Closure Date, the initial decision must be issued within 90 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(3) The Standard Record Closure Date in a proceeding under paragraph (b) of this section is 237 days after the *Federal Register* notice announcing the opportunity to request a hearing.

(c) In a highly expedited proceeding where the application references both a categorical exclusion and an NRC approval providing finality in the adjudicatory proceeding on design information within the application (including a design certification or a manufacturing license), the initial decision must be issued within the following timeframes, except to the extent that unavoidable and extreme circumstances necessitate a delay.

(1) The initial decision must be issued within 45 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) The Standard Record Closure Date in a proceeding under paragraph (c) of this section is 132 days after the *Federal Register* notice announcing the opportunity to request a hearing.

(d) In a highly expedited proceeding other than one under paragraph (c) of this section or in a proceeding for the direct or indirect transfer of control of an NRC license authorizing reactor operation when the transfer requires prior approval of the NRC under the Commission's regulations, governing statute, or pursuant to a license condition, the

initial decision must be issued within the following timeframes, except to the extent that unavoidable and extreme circumstances necessitate a delay.

(1) The initial decision must be issued within 60 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) The Standard Record Closure Date in a highly expedited proceeding under paragraph (d) of this section is 147 days after the *Federal Register* notice announcing the opportunity to request a hearing. The Standard Record Closure Date in a transfer proceeding under paragraph (d) of this section is 137 days after the *Federal Register* notice announcing the opportunity to request a hearing.

(e) In a proceeding other than one described in paragraphs (a) through (d) of this section, the initial decision must be issued within the following timeframes, except to the extent that unavoidable and extreme circumstances necessitate a delay.

(1) For contentions submitted by the Standard Record Closure Date, the initial decision must be issued within 100 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(2) For contentions submitted after the Standard Record Closure Date, the initial decision must be issued within 90 days of:

(i) The admission of the contention if the presiding officer immediately proceeds to the evidentiary hearing phase in accordance with § 2.332(d); or

(ii) Otherwise, the triggering event for the evidentiary hearing as determined in the presiding officer's scheduling order issued in accordance with § 2.332.

(3) The Standard Record Closure Date in a proceeding under paragraph (e) of this section is 212 days after the *Federal Register* notice announcing the opportunity to request a hearing.

**§ 2.1208 – 2.1209 [Reserved]**

33. Remove and reserve §§ 2.1208 and 2.1209.

**§ 2.1210 [Amended]**

34. In § 2.1210, in the introductory text of paragraph (a) remove the phrase “an informal hearing” and add in its place the phrase “a hearing”; in the introductory text of paragraph (c) remove the reference “§§ 2.1207 or 2.1208.” and add in its place the reference “§ 2.1206.”.

35. In § 2.1213, revise paragraph (c) to read as follows:

**§ 2.1213 Application for a stay.**

* * * * *

(c) Within seven (7) days after service of an application for a stay of the NRC staff's action under this section, any party and/or the NRC staff may file an answer supporting or opposing the granting of a stay. Answers may not be longer than ten (10) pages, exclusive of affidavits, and must concisely address the matters in paragraph (b) of this section as appropriate. Further replies to answers will not be entertained.

* * * * *

36. Add § 2.1214 to read as follows:

**§ 2.1214 Additional procedures for license transfer applications.**

(a) *Notice of receipt and withdrawal of application.*

(1) 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 at the NRC website, *https://www.nrc.gov*.

(2) 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 parts 50 or 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.

(3) Periodic lists of applications received may be obtained upon request addressed to the NRC Public Document Room, US Nuclear Regulatory Commission, Washington, DC 20555-0001.

(4) 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 paragraphs (a)(1) and (2) of this section.

(b) *Written comments.*

(1) 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.

(2) 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.

(3) 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.

(c) *Generic determination regarding license amendments to reflect transfers.*

(1) 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 genuine issue as to whether the health and safety of the public will be significantly affected.”

(2) 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.

(d) *Role of NRC staff*. Except as otherwise directed in accordance with § 2.1202(b)(1), the NRC staff is not required to be a party to proceedings under this subpart but will offer into evidence its safety evaluation report associated with the transfer application and provide one or more sponsoring witnesses.

**Subpart M [Reserved]**

37. Remove and reserve subpart M.

38. In appendix B to part 2, remove and reserve sections II and III.

**Appendix B TO 10 CFR PART 2—MODEL MILESTONES TO BE USED BY A PRESIDING OFFICER AS A GUIDELINE IN DEVELOPING A HEARING SCHEDULE FOR THE CONDUCT OF AN ADJUDICATORY PROCEEDING IN ACCORDANCE WITH 10 CFR 2.332.**

* * * * *

Sections II – III [Reserved]

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

39. The authority citation for part 51 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under Nuclear Waste Policy Act secs. 135, 141, 148 (42 U.S.C. 10155, 10161, 10168).

Section 51.22 also issued under Atomic Energy Act sec. 274 (42 U.S.C. 2021) and under Nuclear Waste Policy Act sec. 121 (42 U.S.C. 10141).

Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act sec. 114(f) (42 U.S.C. 10134(f)).

40. In § 51.104, remove and reserve paragraph (b) and revise the heading of the section and paragraph (a) to read as follows:

**§ 51.104 NRC proceeding using public hearings.**

(a) In any proceeding in which a hearing is held, any party to the proceeding may take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart in accordance with the provisions of part 2 of this chapter applicable to that proceeding or in accordance with the terms of the notice of hearing. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

(b) [Reserved]

* * * * *

**PART 52 – LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS**

41. The authority citation for part 52 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

42. Revise the last sentence of § 52.21 to read as follows:

**§ 52.21 Administrative review of applications; hearings.**

* * * All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in 10 CFR part 2, as applicable.

43. Revise the last sentence of § 52.163 to read as follows:

**§ 52.163 Administrative review of applications; hearings.**

* * * All hearings on manufacturing licenses are governed by the hearing procedures contained in 10 CFR part 2.

44. Revise section 8 of appendix N to part 52 to read as follows:

**Appendix N to Part 52—Standardization of Nuclear Power Plant Designs: Combined Licenses To Construct and Operate Nuclear Power Reactors of Identical Design at Multiple Sites**

* * * * *

8. The Commission shall designate a presiding officer to conduct the proceeding with respect to the health and safety, common defense and security, and environmental matters relating to the common design. The hearing will be governed by the applicable provisions of part 2 of this chapter relating to applications for combined licenses. The presiding officer shall issue a partial initial decision on the common design.

**PART 54 – REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS**

45. The authority citation for part 54 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2136, 2137, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); 44 U.S.C. 3504 note.

Section 54.17 also issued under E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

46. Revise § 54.27 to read as follows:

**§ 54.27 Hearings.**

A notice of an opportunity for a hearing will be published in the *Federal Register* in accordance with 10 CFR 2.105 and 2.309. In the absence of a request for a hearing filed by a person whose interest may be affected, the Commission may issue a renewed operating license or renewed combined license without a hearing upon a 30-day notice and publication in the *Federal Register* of its intent to do so.

Dated: February 27, 2026.

For the Nuclear Regulatory Commission.

**Carrie Safford,**
*Secretary of the Commission.*

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