

Nuclear Regulatory Commission

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§2.1210 Initial decision and its effect.

(a) Unless the Commission directs that the record be certified to it in accordance with paragraph (b) of this section, the presiding officer shall render an initial decision after completion of an informal hearing under this subpart. That initial decision constitutes the final action of the Commission on the contested matter forty (40) days after the date of issuance, unless:

(1) Any party files a petition for Commission review in accordance with §2.1212;

(2) The Commission, in its discretion, determines that the presiding officer's initial decision is inconsistent with the staff's action as described in the notice required by §2.1202(a) and that the inconsistency warrants Commission review, in which case the Commission will review the initial decision; or

(3) The Commission takes review of the decision sua sponte.

(b) The Commission may direct that the presiding officer certify the record to it without an initial decision and prepare a final decision if the Commission finds that due and timely execution of its functions warrants certification.

(c) An initial decision must be in writing and must be based only upon information in the record or facts officially noticed. The record must include all information submitted in the proceeding with respect to which all parties have been given reasonable prior notice and an opportunity to comment as provided in §§2.1207 or 2.1208. The initial decision must include:

(1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact or law admitted as part of the contentions in the proceeding;

(2) The appropriate ruling, order, or grant or denial of relief with its effective date;

(3) The action the NRC staff shall take upon transmittal of the decision to the NRC staff under paragraph (e) of this section, if the initial decision is inconsistent with the NRC staff action as described in the notice required by §2.1202(a); and

(4) The time within which a petition for Commission review may be filed, the time within which any answers to a

petition for review may be filed, and the date when the decision becomes final in the absence of a petition for Commission review or Commission sua sponte review.

(d) Pending review and final decision by the Commission, an initial decision resolving all issues before the presiding officer is immediately effective upon issuance except:

(1) As provided in any order issued in accordance with §2.1211 that stays the effectiveness of an initial decision; or

(2) As otherwise provided by this part (e.g., §2.340) or by the Commission in special circumstances.

(e) Once an initial decision becomes final, the Secretary shall transmit the decision to the NRC staff for action in accordance with the decision.

§2.1211 Immediate effectiveness of initial decision directing issuance or amendment of licenses under part 61 of this chapter.

An initial decision directing the issuance of a license under part 61 of this chapter (relating to land disposal of radioactive waste or any amendments to such a license authorizing actions which may significantly affect the health and safety of the public) will become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards may not issue a license under part 61 of this chapter, or any amendment to such a license that may significantly affect the health and safety of the public until expressly authorized to do so by the Commission.

§2.1212 Petitions for Commission review of initial decisions.

Parties may file petitions for review of an initial decision under this subpart in accordance with the procedures set out in §2.341. 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.

§2.1213 Application for a stay.

(a) Any application for a stay of the effectiveness of the NRC staff's action on a matter involved in a hearing under this subpart must be filed with the presiding officer within five (5)

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days of the issuance of the notice of the NRC staff's action under §2.1202(a) and must be filed and considered in accordance with paragraphs (b), (c) and (d) of this section.

(b) An application for a stay of the NRC staff's action may not be longer than ten (10) pages, exclusive of affidavits, and must contain:

(1) A concise summary of the action which is requested to be stayed; and

(2) A concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.

(c) Within ten (10) 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.

(d) In determining whether to grant or deny an application for a stay of the NRC staff's action, the following will be considered:

(1) Whether the requestor will be irreparably injured unless a stay is granted;

(2) Whether the requestor has made a strong showing that it is likely to prevail on the merits;

(3) Whether the granting of a stay would harm other participants; and

(4) Where the public interest lies.

(e) Any application for a stay of the effectiveness of the presiding officer's initial decision or action under this subpart shall be filed with the Commission in accordance with §2.342.

Subpart M—Procedures for Hearings on License Transfer Applications

SOURCE: 63 FR 66730, Dec. 3, 1998, unless otherwise noted.

§2.1300 Scope of subpart M.

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings on an application for the direct or indirect transfer of control of an NRC license when the transfer requires prior ap-

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proval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. This subpart provides the only mechanism for requesting hearings on license transfer requests, unless contrary case specific orders are issued by the Commission.

[69 FR 2270, Jan. 14, 2004]

§2.1301 Public notice of receipt of a license transfer application.

(a) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application at the NRC Web site, <http://www.nrc.gov>.

(b) The Commission will also publish in the FEDERAL REGISTER a notice of receipt of an application for approval of a license transfer involving 10 CFR part 50 and part 52 licenses, major fuel cycle facility licenses issued under part 70, or part 72 licenses. This notice constitutes the notice required by §2.105 with respect to all matters related to the application requiring NRC approval.

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

[63 FR 66730, Dec. 3, 1998, as amended at 64 FR 48949, Sept. 9, 1999]

§2.1302 Notice of withdrawal of an application.

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

§2.1303 Availability of documents.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each application for a license transfer requiring Commission approval will be placed at the NRC Web site, <http://www.nrc.gov>, when available:

(a) The license transfer application and any associated requests;