

## Nuclear Regulatory Commission

## § 2.335

commencement of discovery against the NRC staff (as otherwise permitted by the provisions of this part) before the publication of the pertinent document will not adversely affect completion of the document and will expedite the hearing.

### **§ 2.333 Authority of the presiding officer to regulate procedure in a hearing.**

To prevent unnecessary delays or an unnecessarily large record, the presiding officer:

- (a) May limit the number of witnesses whose testimony may be cumulative;
- (b) May strike argumentative, repetitious, cumulative, unreliable, immaterial, or irrelevant evidence;
- (c) Shall require each party or participant who requests permission to conduct cross-examination to file a cross-examination plan for each witness or panel of witnesses the party or participant proposes to cross-examine;
- (d) Must ensure that each party or participant permitted to conduct cross-examination conducts its cross-examination in conformance with the party's or participant's cross-examination plan filed with the presiding officer;
- (e) May take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and
- (f) May impose such time limitations on arguments as the presiding officer determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

### **§ 2.334 Schedules for proceedings.**

(a) Unless the Commission directs otherwise in a particular proceeding, the presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding shall, based on information and projections provided by the parties and the NRC staff, establish and take appropriate action to maintain a schedule for the completion of the evidentiary record and, as appropriate, the issuance of its initial decision.

(b) The presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding shall provide written

notification to the Commission any time during the course of the proceeding when it appears that the completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the schedule established under § 2.334(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 or the Board proposes to take to avoid or mitigate the delay.

### **§ 2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.**

(a) Except as provided in paragraphs (b), (c), and (d) of this section, no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part.

(b) A party to an adjudicatory proceeding subject to this part may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception made for the particular proceeding. The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested. Any other party may file a response by counter affidavit or otherwise.