

§ 820.3

Presiding Officer means the Administrative Law Judge designated to be in charge of an enforcement adjudication who shall conduct a fair and impartial hearing, assure that the facts are fully elicited, adjudicate all issues, avoid delay, and shall have authority to:

- (i) Conduct an adjudicatory hearing under this part;
- (ii) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;
- (iii) Exercise the authority set forth in § 820.8;
- (iv) Admit or exclude evidence;
- (v) Hear and decide questions of fact, law, or discretion, except for the validity of regulations and interpretations issued by DOE;
- (vi) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;
- (vii) Draw adverse inferences against a party that fails to comply with his orders;
- (viii) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

Remedy means any action necessary or appropriate to rectify, prevent, or penalize a violation of the Act, a Nuclear Statute, or a DOE Nuclear Safety Requirements, including the assessment of civil penalties, the requirement of specific actions, or the modification, suspension or rescission of a contract.

Respondent means any person to whom the Director addresses a Notice of Violation.

Secretarial Officer means the Assistant Secretary or Office Director who is primarily responsible for the conduct of an activity under the Act. With regard to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval nuclear propulsion, Secretarial Officer shall mean the Deputy Assistant Secretary for Naval Reactors.

Secretary means the Secretary of Energy or his designee.

- (b) Terms defined in the Act and not defined in these rules are used con-

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sistent with the meanings given in the Act.

- (c) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 820.3 Separation of functions.

(a) *Separation of functions.* After a respondent requests an on-the-record adjudication of an assessment of a civil penalty contained in a Final Notice of Violation, no person shall participate in a decision-making function in an enforcement proceeding if he has been, is or will be responsible for an investigative or prosecutorial function related to that proceeding or if he reports to the person responsible for the investigative or prosecutorial function.

(b) *Director.* The Director shall be responsible for the investigation and prosecution of violations of the DOE Nuclear Safety Requirements. After the request for an enforcement adjudication, the Director shall not discuss *ex parte* the merits of the proceeding with a DOE Official or any person likely to advise the DOE Official in the decision of the proceeding.

(c) *Presiding Officer.* A Presiding Officer shall perform no duties inconsistent with his responsibilities as a Presiding Officer, and will not be responsible to or subject to the supervision or direction of any officer or employee engaged in the performance of an investigative or prosecutorial function. The Presiding Officer may not consult any person other than a member of his staff or a special assistant on any fact at issue unless on notice and opportunity for all parties to participate, except as required for the disposition of *ex parte* matters as authorized by law.

§ 820.4 Conflict of interest.

A DOE Official may not perform functions provided for in this part regarding any matter in which he has a financial interest or has any relationship that would make it inappropriate for him to act. A DOE Official shall withdraw at any time from any action in which he deems himself disqualified