

FEDERAL REGISTER

THE NATIONAL ARCHIVES
 LITTERA
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 MANET
 OF THE UNITED STATES
 1934

VOLUME 27 NUMBER 9

Washington, Saturday, January 13, 1962

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Worth 3-3261

prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

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Rules and Regulations

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 2—RULES OF PRACTICE

PART 3—RULES OF PROCEDURE IN CONTRACT APPEALS

Revision of Rules

The Commission has adopted a revised 10 CFR Part 2, "Rules of Practice", governing procedure in all proceedings under the Atomic Energy Act of 1954, as amended, for granting, sustaining, revoking, or amending any license, authorization or construction permit, or application to transfer control of a licensed facility; public rule making; the disposition of appeals from decisions of contracting officers in disputes under contracts or subcontracts of the Atomic Energy Commission; and declaring a patent to be affected with the public interest or granting a patent license.

Part 2, which has been in effect since March, 1956, has been amended from time to time. On February 1, 1961, the Commission adopted "A Report on the Regulatory Program of the Atomic Energy Commission", which was the basis of a recent reorganization of its regulatory staff and functions. That Report recommended further action directed toward development of the Commission's procedural as well as substantive regulations.

In order to expedite and improve the performance of its regulatory functions, the Commission has adopted the following amendments to its regulations. The amendments are designed to expedite proceedings without sacrificing the fair and impartial consideration and adjudication of issues, and to embody the results of experience gained under the existing rules while incorporating useful provisions of the rules of practice or other regulatory agencies and of the Federal Rules of Civil Procedure.

The existing 10 CFR Part 3, "Rules of Procedure in Contract Appeals", largely incorporates by reference pertinent provisions of Part 2. The revision of Part 2 now incorporates the substance of Part 3 as a new Subpart D.

Inasmuch as this amendment relates to agency procedure and practice, the Commission has found that general notice of proposed rule making and public procedure thereon are unnecessary, and that good cause exists why this amendment should be made effective forty-five (45) days after publication in the FEDERAL REGISTER. The Commission will continue to study the problems involved in these rules with a view to making such further changes as may from time to time appear desirable. Members of the bar, commission contractors, and others are invited to submit comments and suggestions to the Commission. Comments and suggestions should be

addressed to the Secretary, United States Atomic Energy Commission, Washington 25, D.C., and will be reviewed by the Commission prior to the effective date of these rules.

Pursuant to the Administrative Procedure Act and the Atomic Energy Act of 1954, as amended, the following rules are published as a document subject to codification, to be effective forty-five (45) days after publication in the FEDERAL REGISTER.

On the effective date of these rules, 10 CFR Part 3, "Rules of Practice in Contract Appeals" is repealed.

Dated at Germantown, Md., this 8th day of January 1962.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,
Secretary.

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AUTHORITY: §§ 2.1 to 2.914 issued under sec. 161, 68 Stat. 948, as amended; 42 U.S.C. 2201.

§ 2.1 Scope.

This part governs the conduct of all proceedings under the Atomic Energy Act of 1954, as amended, for (a) granting, suspending, revoking, amending, or taking other action with respect to any license, authorization, construction permit, or application to transfer a license; (b) public rule making; (c) appeals from decisions of contracting officers in disputes arising, or alleged to arise, under a contract with the Atomic Energy Commission or a subcontract under such a contract; and (d) declaring a patent to be affected with the public interest, and the granting of a patent license under section 153 of the Act, but excluding all other patent matters.¹

¹ The specifications, pursuant to Section 156 of the Act, for patent licenses to use Commission-held patents or those declared subject to licensing under Section 153 a. of the Act, are set forth in Part 81 of this chapter. Patent Compensation Board proceedings under Sections 157 and 173 of the Act are governed by Part 80 of this chapter.

§ 2.2 Subparts.

Each subpart other than Subpart G sets forth special rules applicable to the type of proceeding described in the first section of that subpart. Subpart G sets forth general rules applicable to all types of proceedings except rule making, and should be read in conjunction with the subpart governing a particular proceeding. Subpart I sets forth special procedures to be followed in proceedings in order to safeguard and prevent disclosure of Restricted Data.

§ 2.3 Resolution of conflict.

In any conflict between a general rule in Subpart G of this part and a special rule in another subpart applicable to a particular type of proceeding, the special rule governs.

§ 2.4 Definitions.

Words or phrases which are defined in the Atomic Energy Act of 1954, as amended, and in this chapter have the same meaning when used in this part. In addition, as used in this part:

(a) "ACRS" means the Advisory Committee on Reactor Safeguards established by the Act.

(b) "Act" means the Atomic Energy Act of 1954, as amended (68 Stat. 919).

(c) "Adjudication" means the process for the formulation of an order for the final disposition of the whole or any part of any proceeding subject to this part, other than rule making.

(d) "Authorization" means an authorization or order issued pursuant to Part 115 of this chapter authorizing construction or operation of certain nuclear reactors.

(e) "Commission" means the Commission of five members or a quorum thereof sitting as a body, as provided by section 21 of the Act, or any officer to whom has been delegated authority pursuant to section 161n of the Act.

(f) "Director of Regulation" means the Director of Regulation or any officer to whom he has delegated authority to act.

(g) "Hearing Examiner" means an individual appointed pursuant to section 11 of the Administrative Procedure Act to conduct proceedings subject to this part.

(h) "License" means a license, construction permit, or authorization issued by the Commission.

(i) "Licensee" means a person who is authorized to conduct activities under a license, construction permit, or authorization issued by the Commission.

(j) "Public Document Room" means the place at 1717 H Street NW., Washington, D.C., at which public records of the Commission will ordinarily be made available for inspection.

(k) "Regulatory staff" means the Director of Regulation, the offices and divisions under his authority, and such legal counsel as may be assigned by the General Counsel.

(l) "Secretary" means the Secretary to the Commission.

Subpart A—Procedure for Issuance, Amendment, Transfer, or Renewal of a License

§ 2.100 Scope of subpart.

This subpart prescribes the procedures for issuance of a license; amendment of a license at the request of the licensee; and transfer and renewal of a license.

§ 2.101 Filing of application.

(a) An application for a license or an amendment to a license shall be filed with the Director of Regulation as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the regulatory staff prior to the filing of an application. Each application will be assigned a docket number.

(b) An applicant for a license for a facility or to receive waste radioactive material from other persons for the purpose of packaging, storage or disposal, shall serve a copy of the application on the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, on the chief executive of the county. The Director of Regulation will send a copy of each such application to the Governor or other appropriate official of the State in which the facility is to be located or the activity is to be conducted, and will cause to be published in the FEDERAL REGISTER a notice of receipt of the application which states the purpose of the application and specifies the location at which the proposed activity would be conducted.

§ 2.102 Administrative review of application.

(a) During review of an application by the regulatory staff, an applicant may be required to supply additional information, and may be requested to confer informally.

(b) The Director of Regulation will refer the application to the ACRS as required by law and in such additional cases as he or the Commission may determine to be appropriate. The ACRS will render to the Commission one or more reports as required by law or as requested by the Commission.

(c) The Director of Regulation will make each report of the ACRS a part of the record of the application, and transmit copies to the appropriate State and local officials.

§ 2.103 Action on applications for byproduct, source, special nuclear material, and operator licenses.

(a) If the Director of Regulation finds that an application for a byproduct, source, special nuclear material or operator license complies with the requirements of the Act and this chapter, he will issue a license and inform the appropriate State and local officials.

(b) If the Director of Regulation finds that an application does not comply with the requirements of the Act and this chapter, he may issue a notice of

proposed denial or a notice of denial of the application and inform the applicant in writing of:

- (1) The information, if any, which is deficient;
- (2) Other reasons, if any, for the proposed denial or denial;
- (3) If a notice of proposed denial, the time within which the applicant must supply the additional information; and
- (4) If a notice of denial, the right of the applicant to request a hearing within thirty (30) days from the date of the denial.

HEARING ON APPLICATION—HOW INITIATED

§ 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* as required by law at least thirty (30) days prior to the date set for hearing in the notice. The notice will state:

- (1) The time, place, and nature of the hearing;
- (2) The authority under which the hearing is to be held;
- (3) The matters of fact and law to be considered; and
- (4) The time within which answers to the notice shall be filed.

(b) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Director of Regulation will transmit a notice of hearing on an application for a facility license or for a license to receive waste radioactive material from other persons for the purpose of packaging, storage or disposal, to the Governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county.

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this Chapter, and if the Commission or the Director of Regulation has not found that a hearing is in the public interest, he will, prior to acting thereon, cause to be published in the *FEDERAL REGISTER* a notice of proposed action with respect to an application for:

- (1) A license for a facility;
- (2) A license to receive waste radioactive material from other persons for the purpose of packaging, storage, or disposal; or
- (3) An amendment of a license specified in subparagraph (1) or (2) of this paragraph and which involves consideration of safety factors significantly different from those previously evaluated.

(b) The notice of proposed action will concisely state:

- (1) The nature of the action proposed;
- (2) The manner in which a copy of the safeguards analysis and of the ACRS report, if any, may be obtained or examined;

(3) A finding that the application does or does not comply with the requirements of the Act and this chapter; and

(4) The text of the proposed license.

(c) If an application for a construction permit is complete enough to permit all evaluations, other than completion inspection, necessary for the issuance of a construction permit and operating license, the notice of proposed issuance of a construction permit may provide that on completion of construction and inspection the operating license will be issued without further prior notice.

(d) The notice of proposed action will provide that, within not less than fifteen (15) days from the date of publication of the notice in the *FEDERAL REGISTER*:

(1) The applicant may file a request for hearing; and

(2) Any person whose interest may be affected by the proceeding may file a petition for leave to intervene.

(e) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice, the Director of Regulation will issue the license, inform the appropriate State and local officials, and cause to be published in the *FEDERAL REGISTER* a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Secretary will issue a notice of hearing or an appropriate order.

§ 2.106 Notice of issuance.

(a) The Director of Regulation will cause to be published in the *FEDERAL REGISTER* notice of the issuance of a license for which a notice of proposed action has been previously published.

(b) The Director of Regulation will cause to be published in the *FEDERAL REGISTER*, and inform the appropriate State and local officials of, the notice of issuance of an:

(1) Amendment of a license for a facility; or

(2) Amendment of a license to receive waste radioactive material from other persons for the purpose of packaging, storage or disposal, which does not involve consideration of factors significantly different from those previously evaluated.

(c) The notice of issuance will concisely state:

- (1) The nature of the amendment;
- (2) The manner in which copies of the safeguards analysis may be obtained and examined;

(3) A finding that the application for the amendment complies with the requirements of the Act and this chapter; and

(4) The text of the amendment.

(d) If a notice of proposed action has not been previously published, the notice of issuance will provide that, within not less than fifteen (15) days from the date of publication of the notice in the *FEDERAL REGISTER*:

(1) The applicant may file a request for a hearing;

(2) Any person whose interest may be affected by the proceeding may file a petition for leave to intervene.

(e) If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the Commission will issue a notice of hearing or an appropriate order.

§ 2.107 Withdrawal of application.

(a) An applicant may withdraw an application at any time prior to the issuance of a notice of hearing.

(b) The withdrawal of an application does not authorize the removal of any document from the files of the Commission.

(c) The Director of Regulation will cause to be published in the *FEDERAL REGISTER* a notice of the withdrawal of an application if notice of receipt of the application has been previously published.

§ 2.108 Denial of application for failure to supply information.

(a) The Director of Regulation may deny an application if an applicant fails to respond to a request for additional information within thirty (30) days from the date of the request, or within such other time as may be specified.

(b) The Director of Regulation will cause to be published in the *FEDERAL REGISTER* a notice of denial when notice of receipt of the application has previously been published. The notice of denial will provide that, within thirty (30) days after the date of the denial, (1) the applicant may demand a hearing, and (2) any person whose interest may be affected by the proceeding may file a petition for leave to intervene.

§ 2.109 Effect of timely renewal application.

If a licensee files an application for a renewal or a new license at least thirty (30) days prior to the expiration of an existing license for any activity of a continuing nature, the existing license will not be deemed to have expired until the application has been finally determined.

Subpart B—Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License

§ 2.200 Scope of subpart.

This subpart prescribes the procedure in cases initiated by the regulatory staff to impose requirements by order on a licensee or to modify, suspend, or revoke a license, or for such other action as may be proper.

§ 2.201 Notice of violation.

(a) Before instituting any proceeding to modify, suspend, or revoke a license or to take other action for alleged violation of any provision of the Act or this chapter or the conditions of the license the Director of Regulation will serve on the licensee a written notice of violation, except as provided in paragraph (c) of this section. The notice of violation will concisely state the alleged violation and will require that the licensee submit, within twenty (20) days of the date of the notice or other specified time, a written reply including a statement as to:

(1) Whether the licensee admits or denies the violation;

(2) The reasons for the violation, if admitted;

(3) Corrective steps which have been taken by the licensee, and the results achieved;

(4) Corrective steps which will be taken; and

(5) The date when full compliance will be achieved.

(b) The notice will provide that, if an adequate reply is not received within the time specified in the notice, the Director of Regulation may issue an order to show cause why the license should not be modified, suspended, or revoked or such other action be taken as may be proper.

(c) When the Director of Regulation finds that the public health, safety, or interest so requires, or that the violation is willful, the notice of violation may be omitted and an order to show cause issued.

§ 2.202 Order to show cause.

(a) The Director of Regulation may institute a proceeding to modify, suspend, or revoke a license or for such other action as may be proper by serving on the licensee an order to show cause which will:

(1) Concisely allege the violations with which the licensee is charged;

(2) Provide that the licensee may file a written answer to the order under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the order;

(3) Inform the licensee of his right, within twenty (20) days of that date of the order, or such other time as may be specified in the order, to demand a hearing;

(4) Specify the issues; and

(5) State the effective date of the order.

(b) A licensee may respond to an order to show cause by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation or charge made in the order to show cause, and may set forth the matters of fact and law on which the licensee relies. The answer may demand a hearing.

(c) If the answer demands a hearing, the Commission will issue an order designating the time and place of hearing.

(d) An answer may consent to the entry of an order in substantially the form proposed in the order to show cause.

(e) The consent of the licensee to the entry of an order shall constitute a waiver by the licensee of a hearing, findings of fact and conclusions of law, and of all right to seek Commission and judicial review or to contest the validity of the order in any forum. The order shall have the same force and effect as an order made after hearing by a presiding officer or the Commission.

(f) When the Director of Regulation finds that the public health, safety, or interest so requires or that the violation is willful, the order to show cause may provide, for stated reasons, that the proposed action be temporarily effective pending further order.

§ 2.203 Settlement.

At any time after the issuance of an order designating the time and place of hearing in a proceeding to modify, suspend or revoke a license or for other action the regulatory staff and a licensee may enter into a stipulation for the settlement of the proceeding. The stipulation shall be subject to approval by the designated presiding officer or, if none has been designated, by the Chief Hearing Examiner, according due weight to the position of the regulatory staff. The presiding officer, or if none has been designated, the Chief Hearing Examiner, may order such adjudication of the issues as he may deem to be required in the public interest to dispose of the proceeding. If approved, the terms of the settlement shall be embodied in a decision and order settling and discontinuing the proceeding.

Subpart C—Procedure for Declaring Patents Affected With the Public Interest and for Licensing of Patents

§ 2.300 Scope of subpart.

This subpart prescribes the procedures for declaring a patent to be affected with the public interest pursuant to Section 153a of the Act, and for granting a license pursuant to Sections 153b(2) and 153e of the Act.

§ 2.301 Definition.

(a) "Patent owner" means the owner of a patent of record in the United States Patent Office.

PROCEDURE FOR DECLARING A PATENT AFFECTED WITH THE PUBLIC INTEREST

§ 2.302 Notice.

Prior to a declaration pursuant to Section 153a of the Act that a patent is affected with the public interest, the Commission will serve upon the patent owner a written notice of intent to declare the patent to be affected with the public interest.

§ 2.303 Request for hearing.

(a) On written request by the patent owner for a hearing, filed within 30 days after the service of the notice or such other time as the Commission may provide by the terms of the notice, the Secretary will issue a notice of hearing.

(b) Failure of the patent owner to request a hearing within the time specified in the notice may result in a declaration by the Commission that the patent is affected with the public interest. The Secretary will serve the declaration on the patent owner.

PROCEDURE FOR GRANTING A LICENSE PURSUANT TO SECTION 153b(2)

§ 2.304 Administrative examination of applications, notice to others, informal conferences.

An application for a license pursuant to Section 153b(2) of the Act, under a patent declared to be affected with the public interest shall be filed with the Secretary, and will be assigned a docket number. The Secretary will give notice of the filing of the application as required by law, and such additional notice

as the Commission may direct. The applicant may be required to submit additional information, and may be requested to confer informally.

§ 2.305 Action on application.

(a) If the Commission proposes to deny an application it will serve on the applicant a notice of denial, which will afford an opportunity to file within the time specified a demand for a hearing.

(b) If the Commission proposes to approve the application and issue a license, it will serve on the applicant and the patent owner a notice of intent to issue a license, which will specify the scope of the proposed license and afford an opportunity to file within the time specified a demand for a hearing.

§ 2.306 Request for hearing.

If either the applicant or the patent owner demands a hearing within the time specified in the notice, the Secretary will issue a notice of hearing. Failure of the applicant to demand a hearing within the time specified may result in a denial of the request for a license, and failure of the patent owner to demand a hearing within the time specified may result in the issuance of a license.

PROCEDURE FOR GRANTING A LICENSE PURSUANT TO SECTION 153c OF THE ACT

§ 2.307 Administrative examination of an application, notice to others, informal conferences.

An application for a license pursuant to Section 153c of the Act for a patent useful in the production or utilization of special nuclear material or atomic energy shall be filed with the Secretary, and will be assigned a docket number. The Secretary will give notice of the filing of the application as required by law, and such additional notice as the Commission may direct. The applicant may be required to submit additional information and may be requested to confer informally regarding the application.

§ 2.308 Notice of application.

Within thirty (30) days after the filing of the application, the Secretary will serve a copy of the application on the patent owner.

§ 2.309 Notice of hearing.

Within thirty (30) days after the filing of the application, the Secretary will serve on the applicant and patent owner a notice of hearing to be held not later than sixty days after the filing of the application.

ROYALTIES

§ 2.310 Royalties.

If the Commission grants a patent license pursuant to Section 153b or 153e of the Act, the patent owner shall be entitled to a reasonable royalty fee from the licensee pursuant to Section 153 of the Act. The royalty fee may be agreed upon by the patent owner and the licensee or, in the absence of an agreement, will be determined by the Commission pursuant to Section 157 of the Act.

Subpart D—Rules of Procedure in Contract Appeals

§ 2.400 Scope of subpart.

This subpart prescribes the procedure for the disposition of appeals from decisions of contracting officers under the disputes articles of contracts with the Atomic Energy Commission and subcontracts under those contracts.

§ 2.401 Definitions.

As used in this subpart:

(a) "Contracting officer" means a representative of the Commission who is authorized by the terms of a contract or subcontract to decide a dispute in the first instance.

(b) "Contractor" includes a subcontractor, and "contract" includes a subcontract.

(c) "Party" includes (1) the contracting officer and the prime contractor, if the dispute arises or is alleged to arise under a prime contract; (2) the prime contractor and subcontractor, if the dispute arises or is alleged to arise under a subcontract; and (3) any other person permitted to intervene in the proceeding. The hearing examiner may, for good cause shown, permit or require the contracting officer to participate as a party to an appeal under a subcontract.

§ 2.402 Security.

All proceedings under this subpart shall be so conducted as to insure compliance with the security regulations and requirements of the Commission. The contracting officer, the hearing examiner, and the Commission will take appropriate steps to insure compliance with those regulations and requirements.

PRELIMINARY PROCEEDINGS

§ 2.410 Initial determination.

When a dispute arising or alleged to arise under a contract cannot be settled by agreement, the contracting officer will expeditiously prepare and serve on the parties his specific written findings of fact, his decision, and a copy of this part.

§ 2.411 Appeal.

A contractor may appeal from a decision of the contracting officer by serving upon the contracting officer the original and three copies of a notice of appeal within the period provided in the contract or, if no such period is provided, within thirty days after service of the decision of the contracting officer upon the parties. A complaint may be served with the notice of appeal.

§ 2.412 Notice of appeal.

(a) The notice of appeal (1) shall be in writing, (2) shall indicate that an appeal is intended thereby, (3) shall identify by number the contract under which the dispute has arisen, or is alleged to arise, and the decision from which the appeal is taken, and (4) may request a hearing.

(b) A suggested form of notice of appeal is set forth in Appendix A to this subpart.

§ 2.413 Complaint.

(a) The contractor shall either (1) serve a complaint on the contracting officer with the notice of appeal, or (2) file the complaint with the Secretary within twenty (20) days thereafter. The hearing examiner assigned to the case, or the Chief Hearing Examiner in the absence of such assignment, may grant an extension of time on motion on reasonable notice to all parties. The complaint shall be served or filed, as the case may be, in an original and three copies.

(b) The complaint shall (1) identify the contract by number; (2) set forth the text of any articles of the contract pertaining to disputes; (3) identify any other articles of the contract alleged to be relevant to the dispute; (4) identify the decision from which the appeal is taken; and (5) specify the portion of the decision which the contractor alleges to be erroneous, with a brief statement of the grounds of the appeal. A suggested form of complaint is set forth in Appendix B to this subpart.

(c) Documentary material in support of the complaint may be attached to it and incorporated by reference. Such documentary material may be admitted in evidence on motion or on oral request at the hearing.

§ 2.414 Transmittal of notice of appeal.

(a) On service of a notice of appeal, the contracting officer shall forthwith endorse the date of receipt on the original and all copies and, within twenty days thereafter, shall file with the Secretary:

(1) The original and two (2) copies of the notice of appeal and the complaint, if served;

(2) Two (2) copies of the contract;

(3) Three (3) copies of his findings of fact and decision;

(4) Two (2) copies of any relevant information, correspondence and other documents; and

(5) Three (3) copies of a list of all documents transmitted.

(b) In complying with the requirement of service prescribed by § 2.712, the contracting officer shall serve on the contractor a copy of the contract and of any relevant information, correspondence, and other documents, only if the contractor demands them in writing within ten (10) days after service of the other documents specified in paragraph (a) of this section.

§ 2.415 Notification of parties by hearing examiner.

On receipt of the documents specified in § 2.414, the Secretary will transmit them to the Office of Hearing Examiners, which will assign a docket number to the appeal and transmit to all parties notice of the filing of the appeal.

§ 2.416 Answer.

(a) Within twenty (20) days after service of the complaint, the respondent shall file with the Secretary an original and three copies of an answer, unless an extension of time is granted.

(b) The answer shall admit or deny each material allegation of the com-

plaint, and shall allege any matters of fact or law asserted to constitute a complete or partial defense. If the respondent has no knowledge or information sufficient to form a belief as to the truth of an allegation, the answer shall so state and the allegation will be deemed to be denied. Each affirmative defense shall be separately stated and numbered.

(c) Lack of jurisdiction of the hearing examiner to hear the appeal, or failure to state a claim on which relief can be granted, may be asserted in the answer or by motion.

(d) Documentary material in support of the answer may be attached to it and incorporated by reference. Such documentary material may be admitted in evidence on motion or on oral request at the hearing.

§ 2.417 Amendment of pleadings.

(a) The hearing examiner may at any time permit a party to amend his complaint or answer, or order that a party make a more definite statement of a complaint or answer, or reply to an answer. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the complaint and answer, the hearing examiner may allow the pleadings to be amended within the scope of the appeal when justice will be served.

(b) Any issue within the scope of the appeal but not raised by the complaint and answer, and tried by express or implied consent of the parties, shall be treated in all respects as if it had been raised in the complaint and answer.

§ 2.418 Dismissal of complaint.

The hearing examiner may at any time order that a complaint be dismissed for lack of jurisdiction or for failure to state a claim on which relief can be granted or, for good cause found, may order a dismissal with or without leave to file an amended complaint.

§ 2.419 Decision by hearing examiner without hearing.

If a hearing has not been demanded by any party and the hearing examiner does not order a hearing on his own motion, he may (a) decide the appeal on the record as it then exists; or (b) direct that proposed findings, conclusions, and supporting briefs be filed by each party and may then proceed to decide the appeal.

HEARING

§ 2.430 Notice of hearing.

(a) If a hearing has been demanded or has been ordered by the hearing examiner on his own motion, a notice of hearing will be issued specifying the time and place for the hearing. The notice of hearing will be served on the parties at least thirty (30) days prior to the date set for a hearing, unless all parties stipulate to a shorter time.

(b) Hearings will ordinarily be held at the Commission office administering the contract, but may be held at Commission Headquarters, Germantown, Maryland, or such other place as the hearing examiner may designate.

RULES AND REGULATIONS

§ 2.431 Conduct of hearing.

(a) The hearing will be conducted as a trial *de novo* of the issues of fact and any relevant issues of law. The hearing examiner will consider the appeal on the record for decision.

(b) Except as the hearing examiner may otherwise order in the interests of justice, the party making a claim has the burden of proof.

§ 2.432 Record for decision.

The record for decision shall consist of:

- The findings of fact and decision of the contracting officer;
- The notice of appeal;

(c) Such portions of the contract, relevant information, correspondence and other documents filed by the contracting officer as may be incorporated by reference into the record;

(d) The pleadings;

(e) The transcript of hearing, if any, and exhibits received in evidence; and

(f) All other written motions, orders, briefs, and other documents ordered to be made a part of the record.

§ 2.433 Decision by the hearing examiner.

(a) When the record is closed, the hearing examiner will consider and decide the issues of fact raised by the appeal and all questions of law necessary for the adjudication of such issues of fact.

(b) The hearing examiner will make specific findings of fact and conclusions of law supported by the substantial evidence of record.

(c) The decision of the hearing examiner will constitute the final action of the Commission thirty (30) days after its date unless any party files a petition for review within twenty (20) days of its date or the Commission directs the record be certified to it for final decision.

COMMISSION REVIEW

§ 2.440 Commission review.

(a) A party may seek an appeal from a decision of a hearing examiner as provided in Subpart G.

(b) In determining whether it will grant the appeal, the Commission may take into consideration:

(1) The propriety of the award on its face, and the size of the award;

(2) Compliance by the contractor, contracting officer, and hearing examiner with the requirements of law and of the contract; and

(3) Substantial and important questions of law, policy, or discretion presented by the record.

APPENDIX A TO SUBPART D

Form of Notice of Appeal

UNITED STATES ATOMIC ENERGY COMMISSION

Appeal of

(Contractor or subcontractor)

Under Contract (Subcontract) No. -----

Docket No. CA-----

NOTICE OF APPEAL

Notice of appeal hereby is filed by

(Name of contractor or subcontractor)

under its Contract (or Subcontract) No. -----

dated ----- with -----

The decision(s) of the AEC Contracting Officer,

(Name and location)

from which the appeal is taken, with the date(s) thereof is (are) as follows:

(here insert by numbered paragraphs the decision or decisions, in substantially the following form:

1. The decision of the Contracting Officer dated November 4, 1958, that radiator valves must be furnished and installed on inventors.

2. The decision of the Contracting Officer dated November 4, 1958, denying the Contractor's claim for an equitable adjustment in contract price.)

(Name of contractor or subcontractor)

By: -----

(Authorized officer of, or attorney for,

appellant)

Address -----

Telephone No. -----

Dated -----

APPENDIX B TO SUBPART D

Form of Complaint

UNITED STATES ATOMIC ENERGY COMMISSION

Appeal of

(Name of contractor or subcontractor)

Under Contract (Subcontract) No. -----

Docket No. CA-----

COMPLAINT

The appellant states to the Commission as follows:

1. This appeal arises under Contract (or Subcontract) No. ----- dated -----

2. Said Contract (or Subcontract) contains a disputes article reading as follows:

3. Other articles of the Contract (or Subcontract) relevant to the dispute which is the subject of this appeal are as follows:

4. This appeal is taken from the decision(s) of the Contracting Officer,

(Name and title)

dated -----

5. The portion or portions of said decision(s) which appellant claims to be erroneous, with reasons therefor, is (are) as follows:

6. The following document(s) is (are) submitted in support of the appeal:

NOTE: Here list, by exhibit number, a short description of the document(s) submitted, each copy of which should be marked, as follows:

Exhibit No. ----- to Complaint of

(Name of contractor or subcontractor)

Docket No. CA-----

7. Appellant requests that an oral hearing on the appeal be held by the AEC Hearing Examiner (Note: This paragraph should be omitted where the right to hearing is waived).

Signed -----

(Authorized officer or representative of appellant)

Address -----

Telephone No. -----

Dated -----

Subpart G—Rules of General Applicability

§ 2.700 Scope of subpart.

The general rules in this subpart govern procedure in all adjudications initiated by the issuance of an order to show cause, a notice of hearing, or a notice of appeal.

§ 2.701 Filing of documents.

(a) Documents shall be filed with the Commission in adjudications subject to this part either (1) by delivery to the Public Document Room at 1717 H Street NW., Washington, D.C., or Office of the Secretary at Commission Headquarters, Germantown, Maryland; or (2) by mail or telegram addressed to the Secretary, United States Atomic Energy Commission, Washington 25, D.C.

(b) All documents offered for filing shall be accompanied by proof of service as required by law or by rule or order of the Commission.

(c) Filing by mail or telegram will be deemed to be complete as of the time of deposit in the mail or with a telegraph company.

§ 2.702 Docket.

The Secretary will maintain a docket of each proceeding subject to this part, commencing with the issuance of the initial notice of hearing or order to show cause or, in the case of a contract appeal, receipt of the notice of appeal. The Secretary will maintain all files and records, including the transcripts of testimony and exhibits and all papers, correspondence, decisions and orders filed or issued.

§ 2.703 Notice of hearing.

(a) In a proceeding in which the terms of a notice of hearing are not otherwise prescribed by this part, the order or notice of hearing will state:

(1) The nature of the hearing, and its time and place, or a statement that the time and place will be fixed by subsequent order;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law asserted or to be considered; and

(4) The time within which an answer shall be filed.

(b) The time and place of hearing will be fixed with due regard for the convenience of the parties or their representatives, the nature of the proceeding, and the public interest.

§ 2.704 Designation of presiding officer, disqualification, unavailability.

(a) The Commission may provide in the notice of hearing that one or more members of the Commission, or a named officer to whom has been delegated final authority in the matter, shall preside. If the Commission does not so provide, the Chief Hearing Examiner will issue an order designating a hearing examiner appointed pursuant to Section 11 of the Administrative Procedure Act to preside.

(b) If a designated presiding officer deems himself disqualified to preside, he shall withdraw by notice on the record and shall notify the Commission of his withdrawal.

(c) If a party deems the presiding officer to be disqualified, he may move that the presiding officer disqualify himself. The motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the presiding officer does not grant the motion he will refer it to the Commission, which

will determine the sufficiency of the grounds alleged.

(d) If a presiding officer becomes unavailable during the course of a hearing, the Commission will designate another presiding officer. If he becomes unavailable after the hearing has been concluded, the Commission may:

(1) Designate another presiding officer to make the decision;

(2) Direct that the record be certified to it for decision; or

(3) Designate another presiding officer.

(e) In the event of substitution of a presiding officer for the one originally designated, any motion predicated upon the substitution shall be made within five (5) days thereafter.

§ 2.705 Answer.

(a) Within twenty (20) days after service of the notice of hearing, or such other time as may be specified in the notice of hearing, a party may file an answer which shall concisely state (1) the nature of his defense or other position; (2) the items of the specification of issues he controverts and those he does not controvert, and (3) whether he proposes to appear and present evidence.

(b) If facts are alleged in the specification of issues, the answer shall admit or deny specifically each material allegation of fact; or, where the party has no knowledge or information sufficient to form a belief, the answer may so state and the statement shall have the effect of a denial. Material allegations of fact not denied shall be deemed to be admitted. Matters alleged as affirmative defenses or positions shall be separately stated and identified and, in the absence of a reply, shall be deemed to be controverted.

(c) If a party does not oppose an order or proposed action embodied in or accompanying the notice of hearing, or does not wish to appear and present evidence at the hearing, the answer shall so state. In lieu of appearing at the hearing, a party may request leave to file a statement under oath or affirmation of reasons why the proposed order or action should not be issued or should differ from that proposed. Such a statement, if accepted, will be accorded whatever weight is deemed proper.

§ 2.706 Reply.

A party may file a reply to an answer within five (5) days after it is served.

§ 2.707 Default.

On failure of a party to file an answer within the time prescribed in this part or as specified in a notice of hearing or pleading, or to appear at a hearing or prehearing conference, the Commission may:

(a) Find the facts as alleged and enter such findings or order as may be appropriate without further notice; or

(b) Proceed without further notice to take proof on the issues specified.

§ 2.708 Formal requirements for documents.

(a) Each document filed in an adjudication subject to this part to which a

docket number has been assigned shall bear the docket number and title of the proceeding.

(b) Each document shall be bound on the left side and typewritten, printed or otherwise reproduced in permanent form on good unglazed paper of standard letterhead size. Each page shall begin not less than one and one-quarter inches from the top, with side and bottom margins of not less than one and one-quarter inches. Text shall be double-spaced, except that quotations may be single-spaced and indented. The requirements of this paragraph do not apply to original documents or admissible copies offered as exhibits, or to specially prepared exhibits.

(c) The original of each document shall be signed in ink by an attorney of record for the party or, in the case of a party not represented by counsel, by the party or his authorized representative. The capacity of the person signing, his address, and the date shall be stated. The signature of a person signing in a representative capacity is a representation that the document has been subscribed in the capacity specified with full authority, that he has read it and knows the contents, that to the best of his knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be stricken.

(d) Except as otherwise provided by this part or by order, a pleading or other document other than correspondence shall be filed in an original and fifteen conformed copies.

(e) The first document filed by any person in a proceeding shall designate the name and address of a person on whom service may be made.

§ 2.709 Acceptance for filing.

A document which fails to conform to the requirements of § 2.708 may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any matter so tendered but not accepted for filing shall not be entered on the Commission's docket.

§ 2.710 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, and holidays are excluded. Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

§ 2.711 Extension of time.

Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Commission or the presiding officer.

§ 2.712 Service of papers, methods, proof.

(a) *Who may make service.* Except for subpoenas, service of which is governed by § 2.720, the Commission will serve all orders, decisions, notices, and other papers issued by it upon all parties.

(b) *Who may be served.* Any paper required to be served upon a party shall be served upon him or upon the representative designated by him or by law to receive service of papers. When a party has appeared by attorney, service may be made upon the attorney of record.

(c) *How service may be made.* Service may be made by personal delivery, by first class, certified or registered mail including air mail, by telegraph, or as otherwise authorized by law. Where there are numerous parties to a proceeding, the Commission may make special provision regarding the service of papers.

(d) *When service complete.* Service upon a party is complete:

(1) By personal delivery, on handing the paper to the individual, or leaving it at his office with his clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place therein or, if the office is closed or the person to be served has no office, leaving it at his usual place of residence with some person of suitable age and discretion then residing there;

(2) By telegraph, when deposited with a telegraph company, properly addressed and with charges prepaid;

(3) By mail, on deposit in the United States mail, properly stamped and addressed; or

(4) When service cannot be effected in a manner provided by subparagraphs (1) to (3) inclusive of this paragraph, in any other manner authorized by law.

(e) *Proof of service.* Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, and may be made by:

(1) Written acknowledgment of the party served or his counsel;

(2) The certificate of counsel if he has made the service; or

(3) The affidavit of the person making the service.

§ 2.713 Appearance and practice before the Commission in Adjudicatory Proceedings.

(a) *Representation.* A person may appear in an adjudication on his own behalf or by an attorney-at-law in good standing 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. An attorney appearing in a representative capacity shall file with

the Commission a written notice of appearance which shall state his name, address, and telephone number; the basis of his eligibility; and the name and address of the person on whose behalf he appears.

(b) *Standards of conduct.* An attorney shall conform to the standards of conduct required in the courts of the United States.

(c) *Suspension of attorneys.* A presiding officer may, by order for good cause stated on the record, suspend or bar from participation in a proceeding any attorney who engages in dilatory tactics or disorderly or contemptuous conduct in the course of a proceeding. An appeal from such an order by a presiding officer may be taken to the Commission.

§ 2.714 Intervention.

(a) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition under oath or affirmation for leave to intervene not later than five (5) days before the commencement of the hearing or within such other time as may be specified in the notice, or as permitted by the presiding officer. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner. A petition for leave to intervene which is not timely filed will be dismissed unless the petitioner shows good cause for failure to file it on time.

(b) Any party to a proceeding may file an answer to a petition to intervene within five (5) days after the petition is filed.

(c) The Commission or, in the event a presiding officer has been designated, the presiding officer will rule on the petition.

(d) An order permitting intervention may be conditioned on such terms as the Commission or presiding officer may direct. A person permitted to intervene becomes a party to the proceeding. The granting of a petition to intervene does not change or enlarge the issues specified in a notice of hearing unless otherwise expressly provided in the order allowing intervention.

§ 2.715 Participation by a person not a party.

(a) A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making oral or written statement of his position on the issues within such limits and on such conditions as may be fixed by the presiding officer, but he may not otherwise participate in the proceeding.

(b) The Commission will give notice of a hearing to any person who requests it. When a communication bears more than one signature, the Commission will give the notice to the person first signing unless the communication clearly indicates otherwise.

(c) The presiding officer will afford a representative of an interested State which is not a party a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and ad-

verse the Commission without requiring the representative to take a position with respect to the issues.

§ 2.716 Consolidation.

On motion and for good cause shown or on its own initiative, the Commission may consolidate for hearing or for other purposes two or more proceedings if it finds that such action will be conducive to the proper dispatch of its business and to the ends of justice.

§ 2.717 Commencement and termination of jurisdiction of presiding officer.

(a) Unless otherwise ordered by the Commission, the presiding officer designated to conduct a hearing has jurisdiction over the proceeding, including motions and procedural matters, from the time when the proceeding commences until the initial decision is rendered. If no presiding officer has been designated, the Chief Hearing Examiner has such jurisdiction or, if he is unavailable, another hearing examiner has such jurisdiction. A proceeding is deemed to commence when a notice of hearing is issued or, in the case of a contract appeal subject to Subpart D, when a notice of appeal is filed. When a notice of hearing provides that the presiding officer is to be a hearing examiner, the Chief Hearing Examiner will designate by order the hearing examiner who is to preside.

(b) Administrative actions affecting persons or matters involved in a proceeding before a presiding officer may be taken by Commission officers authorized to act, subject to such modification as may be determined by the presiding officer to be appropriate to the purposes of the pending proceeding.

§ 2.718 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. He has all powers necessary to those ends, including the powers to:

(a) Administer oaths and affirmations.

(b) Issue subpoenas authorized by law.

(c) Rule on offers of proof, and receive evidence.

(d) Order depositions to be taken.

(e) Regulate the course of the hearing and the conduct of the participants.

(f) Dispose of procedural requests or similar matters.

(g) Examine witnesses.

(h) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose.

(i) Certify questions to the Commission for its determination, either in his discretion or on direction of the Commission.

(j) Reopen a proceeding for the reception of further evidence at any time prior to initial decision.

(k) Issue initial decisions; and

(l) Take any other action consistent with the Act, this chapter, and the Administrative Procedure Act of 1946.

§ 2.719 Separation of functions.

(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 investigative or prosecuting functions.

(b) In any adjudication, the presiding officer may not consult any person other than a member of his staff on any fact in 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.

(c) In any case of adjudication, no officer or employee of the Commission who has engaged in the performance of any investigative or prosecuting function in the case or a factually related case may participate or advise in the initial or final decision, except as a witness or counsel in the proceeding.

§ 2.720 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he is not available, the Chief Hearing Examiner or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made; but he shall not attempt to determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it shall be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivery of a copy of the subpoena to the person named in it and tendering him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered, and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena shall be paid, by the party at whose instance they appear, the fees and mileage paid to witnesses in the district courts of the United States.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgment of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of service shall not affect the validity of the service.

(f) On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the

person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms.

(g) On application and for good cause shown, the Commission will seek judicial enforcement of a subpoena issued to a party and which has not been quashed.

MOTIONS

§ 2.730 Motions.

(a) *Presentation and disposition.* All motions shall be addressed to the Commission. All written motions shall be filed with the Secretary and served on all parties to the proceeding. During the time when a proceeding is before the Commission, a motion for an extension of time which would ordinarily be granted as of course, and to which all parties consent, may be acted upon by the Chief Hearing Examiner.

(b) *Form and content.* Unless made orally on the record during a hearing, or the presiding officer directs otherwise, a motion shall be in writing, shall state with particularity the grounds and the relief sought, and shall be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order.

(c) *Answers to motions.* Within five (5) days after service of a written motion, or such other period as the Commission or presiding officer may prescribe, a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. If no answer is filed, the parties shall be deemed to have consented to the granting of the motion. The moving party shall have no right to reply, except as permitted by the presiding officer or the Commission.

(d) *Oral arguments; briefs.* No oral argument will be heard on a motion unless the presiding officer or the Commission directs otherwise. A written brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on.

(e) *Disposition of motion.* A written motion will be disposed of by written order and on notice to all parties.

(f) *Interlocutory appeals to the Commission.* No interlocutory appeal may be taken to the Commission from a ruling of the presiding officer. When in the judgment of the presiding officer prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, the presiding officer may refer the ruling promptly to the Commission, and notify the parties either by announcement on the record or by written notice if the hearing is not in session.

(g) *Effect of filing a motion or allowance of an interlocutory appeal.* Unless otherwise ordered, neither the filing of a motion nor the allowance of an interlocutory appeal shall stay the proceeding or extend the time for the performance of any act.

§ 2.731 Order of procedure.

The presiding officer or the Commission will designate the order of procedure at a hearing. The proponent of an order will ordinarily open and close.

§ 2.732 Burden of proof.

Unless otherwise ordered by the presiding officer, the applicant or the proponent of an order has the burden of proof.

§ 2.733 Examination by experts.

At the request of a party, a presiding officer may permit a qualified individual who has scientific or technical training or experience to participate on behalf of that party in the examination and cross-examination of expert witnesses.

DEPOSITIONS AND WRITTEN INTERROGATORIES; DISCOVERY; ADMISSION; EVIDENCE

§ 2.740 Depositions and Written Interrogatories.

(a) On motion and for good cause shown, the Commission may order that the testimony of any party or other person be taken by deposition on oral examination or written interrogatories. The attendance of witnesses may be compelled by subpoena.

(b) The motion shall give reasonable notice of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or, if the name is not known, a general description sufficient to identify him or the class or group to which he belongs; and the reasons why the deposition should be taken. If good cause is shown, an order will be issued authorizing the deposition and imposing any proper limitations for the benefit of witnesses or parties. The order shall be served on all parties by the person proposing to take the deposition a reasonable time in advance of the time fixed for taking testimony.

(c) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of the United States, or a person authorized to administer oaths designated by the Commission.

(d) Unless the order provides otherwise, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the hearing. He shall be sworn or shall affirm before any questions are put to him. Examination and cross-examination shall proceed as at a hearing. Except as the parties otherwise agree, the deposition upon written interrogatories shall be taken with only parties and counsel, the deponent, the officer, and the reporter or stenographer present during the interrogation, and the officer shall certify to that fact. Each question propounded shall be recorded and the answer taken down in the words of the witness. Objections on questions of evidence shall be noted in short form without the arguments. The

officer shall not decide on the competency, materially, or relevancy of evidence but shall record the evidence subject to objection. Objections to questions of evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(e) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless he is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly forward the deposition by registered mail to the Commission.

(f) Where the deposition is to be taken on written interrogatories, the party proposing the deposition shall file a copy of the proposed interrogatories showing each interrogatory separately and consecutively numbered, the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be taken. Within seven (7) days after filing, any other party may serve cross-interrogatories. Objections to interrogatories or cross-interrogatories shall be made promptly and will be ruled upon by the presiding officer. Objections to form, unless made before the order for taking the deposition is issued, shall be deemed waived. The interrogatories, cross-interrogatories, and answers shall be recorded and signed, and the deposition certified, returned, and filed as in the case of a deposition on oral examination.

(g) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.

(h) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(i) The witness may be accompanied, represented, and advised by legal counsel.

§ 2.741 Discovery and production of documents and things for inspection, copying, or photographing.

(a) *Order to produce.* On motion of any party showing good cause and on notice to all other parties, the Commission may:

(1) Order any party to produce and permit the inspection and copying or photographing, by and on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things in his or its possession, custody, or control, which are not determined to be privileged, and which constitute or contain evidence (including the existence, description, nature, custody, condition and location of any books, documents,

or other tangible things and the identity and location of persons having knowledge of relevant facts) regarding any matter that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any party; or

(2) Order any party to permit entry upon designated land or other property in his or its possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation which is relevant within subparagraph (1) of this paragraph.

(b) *Relation to admissible evidence.* It is not ground for objection to the motion that the evidence will be inadmissible if the evidence sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Scope of order.* The order shall specify the time, place, and manner of making the inspection and taking the copies and photographing, and may prescribe such terms and conditions as are just. The Commission may make an order that the inspection, copying, measuring, surveying, or photographing shall be limited to certain matters or that secret processes, developments, or research need not be disclosed and any other order which justice requires to protect the party from annoyance, embarrassment, or oppression.

§ 2.742 Admissions.

(a) At any time after his answer has been filed, a party may file a written request for the admission of the genuineness and authenticity of any relevant document described in or attached to the request, or for the admission of the truth of any specified relevant matter of fact. A copy of the document shall be delivered with the request unless a copy has already been furnished.

(b) Each requested admission shall be deemed made unless, within a time designated by the presiding officer or the Commission, and not less than ten (10) days after service of the request or such further time as may be allowed on motion, the party to whom the request is directed serves on the requesting party either (1) a sworn statement denying specifically the relevant matters of which an admission is requested or setting forth in detail the reasons why he can neither truthfully admit nor deny them, or (2) written objections on the ground that some or all of the matters involved are privileged or irrelevant or that the request is otherwise improper in whole or in part. Answers on matters to which such objections are made may be deferred until the objections are determined. If written objections are made to only a part of a request, the remainder of the request shall be answered within the time designated.

(c) Admissions obtained pursuant to the procedure in this section may be used in evidence to the same extent and subject to the same objections as other admissions.

§ 2.743 Evidence.

(a) *General.* Every party to a proceeding shall have the right to present

such oral or documentary evidence and rebuttal evidence and conduct such cross-examination as may be required for full and true disclosure of the facts.

(b) *Written testimony.* Where the interest of any party will not be prejudiced, it is expected that each party will submit all or part of the direct testimony of his witnesses in written form, unless objections are presented and as otherwise ordered by the presiding officer. Unless otherwise ordered by the presiding officer, a party may: Serve copies of proposed written testimony on all parties at least five (5) days in advance of the session of the hearing at which such testimony is to be presented, unless all parties agree that all or any part of such five (5) days' prior service be waived; the presiding officer may permit the introduction of written testimony after having given all parties present a reasonable opportunity to examine it. Whenever it is deemed necessary or desirable, the Commission or the presiding officer may direct that proposed testimony be reduced to written form and be served and offered in the manner described in this paragraph, allowing a reasonable time for the preparation of the written testimony.

(c) *Admissibility.* Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

(d) *Objections.* An objection to evidence shall briefly state the grounds of objection. The transcript shall include the objection, the grounds, and the ruling. Exception to an adverse ruling is preserved without notation on the record.

(e) *Offer of proof.* An offer of proof made in connection with an objection to a ruling of the presiding officer excluding or rejecting proffered oral testimony shall consist of a statement of the substance of the proffered evidence. If the excluded evidence is written, a copy shall be marked for identification. Rejected exhibits, adequately marked for identification, shall be retained in the record.

(f) *Exhibits.* A written exhibit will not be received in evidence unless the original and two copies are offered and a copy furnished to each party, or the parties have previously been furnished with copies or the presiding officer directs otherwise. The presiding officer may permit a party to replace with a true copy an original document admitted in evidence.

(g) *Record of the application.* In any proceeding involving an application, there shall be offered in evidence the record of the application, including the application, amendments, correspondence related to the application, reports if any of the ACRS, and any other documents except as limited by section 181 of the Act or order of the Commission.

(h) *Official record.* An official record of a government agency or entry in an official record may be evidenced by an official publication or by a copy attested by the officer having legal custody of the record and accompanied by a certificate of his custody.

(i) *Official notice.* Official notice may be taken of any fact of which judicial

notice might be taken by the courts of the United States and of any technical or scientific fact within the knowledge of the Commission as an expert body, if (1) the fact is specified in the record or is brought to the attention of the parties before final decision, and (2) every party adversely affected by the decision is afforded an opportunity to controvert the fact. Any party may oppose a request that official notice be taken of a fact. If a decision is stated to rest in whole or in part on official notice of a fact which the parties have not had a prior opportunity to controvert, a party may controvert the fact by filing a petition for review of an initial decision or a petition for reconsideration of a final decision, clearly and concisely setting forth the information relied on to show the contrary.

HEARINGS

§ 2.750 Official reporter; transcript.

(a) A hearing will be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated from time to time by the Commission or may be a regular employee of the Commission. The transcript prepared by the reporter shall be the sole official transcript of the proceeding. Except as limited pursuant to Section 181 of the Act or order of the Commission, the transcript will be open for inspection at the Public Document Room. Copies of transcripts are available to parties and to the public from the official reporter on payment of the charges fixed therefor.

(b) *Transcript corrections:* Corrections of the official transcript may be made only in the manner provided by this paragraph. Corrections ordered or approved by the presiding officer shall be included in the record as an appendix, and when so incorporated the Secretary shall make the necessary physical corrections in the official transcript so that it will incorporate the changes ordered. In making corrections there shall be no substitution of pages but, to the extent practicable, corrections shall be made by running a line through the matter to be changed without obliteration and writing the matter as changed immediately above. Where the correction consists of an insertion, it shall be added by rider or interlineation as near as possible to the text which is intended to precede and follow it.

§ 2.751 Hearings to be public.

Except as may be requested pursuant to Section 181 of the Act, all hearings will be public unless otherwise ordered by the Commission.

§ 2.752 Prehearing conference.

(a) The Commission or the presiding officer may direct the parties or their counsel to appear at a specified time and place for a conference to consider:

(1) Simplification and clarification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining stipulations and admissions of fact and of the contents and authenticity of docu-

ments which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence, including the preparation of written testimony; and

(5) Such other matters as may aid in the orderly disposition of the proceeding.

(b) Prehearing conferences may be stenographically reported.

(c) The Commission or the presiding officer may enter an order which recites the action taken at the conference, the amendments allowed to the pleadings, and agreements by the parties, and which limits the issues. The order shall control the subsequent course of the proceeding unless modified for good cause.

§ 2.753 Stipulations.

The parties may stipulate in writing or orally on the record during a hearing as to matters of fact or procedure. Such a stipulation may be received in evidence.

§ 2.754 Proposed findings and conclusions.

(a) Within twenty (20) days after the record is closed, or within such reasonable additional time as may be allowed by the presiding officer, any party to the proceeding may, or if so directed by the presiding officer, shall file proposed findings of fact and conclusions of law, briefs and a proposed form of order or decision. Failure to file proposed findings of fact, conclusions of law or briefs when directed to do so may be deemed a default, and an order or initial decision may be entered accordingly.

(b) Except as otherwise ordered by the presiding officer:

(1) The party who has the burden of proof shall initially file proposed findings of fact and conclusions of law and briefs, and a proposed form of order or decision;

(2) Other parties may file proposed findings, conclusions of law and briefs within twenty (20) days thereafter;

(3) A party who has the burden of proof may reply within ten (10) days after service of proposed findings and conclusions of law and briefs by other parties.

(c) Proposed findings of fact shall be clearly and concisely set forth in numbered paragraphs and shall be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law shall be set forth in numbered paragraphs as to all material issues of law or discretion presented on the record. Proposed findings of fact and conclusions of law submitted by a person who does not have the burden of proof and who has only a limited interest in the proceeding may be confined to matters which affect his interests.

§ 2.755 Oral argument before presiding officer.

When, in the opinion of the presiding officer, time permits and the nature of

the proceeding and the public interest warrant, he may allow and fix a time for the presentation of oral argument. He will impose appropriate limits of time on the argument. The transcript of the argument shall be a part of the record.

INITIAL DECISION AND COMMISSION REVIEW

§ 2.760 Initial decision and its effect.

(a) After hearing, the presiding officer will render an initial decision which will constitute the final action of the Commission thirty (30) days after its date unless a party files a petition for review within twenty (20) days of its date or the Commission directs that the record be certified to it for final decision.

(b) Where the public interest so requires, the Commission may direct that the presiding officer certify the record to it without an initial decision, and may:

(1) Prepare its own initial decision, which will become final unless exceptions are filed; or

(2) Omit an initial decision on a finding that due and timely execution of its functions imperatively and unavoidably so requires.

(c) An initial decision will be in writing and will be based on the whole record and supported by reliable, probative, and substantial evidence. The initial decision will include:

(1) Findings, conclusions and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on the record;

(2) All facts officially noticed and relied on in making the decision;

(3) The appropriate ruling, order or denial of relief with the effective date, and the time within which a petition for review may be filed;

(4) In the case of an initial decision which may become final in accordance with paragraph (a) of this section, the date when it may become final.

§ 2.761 Expedited decisional procedure.

(a) The presiding officer may determine a proceeding by an order after the conclusion of a hearing without issuing an initial decision, when:

(1) All parties stipulate that the initial decision may be omitted and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains, and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that dispensing with the issuance of the initial decision is in the public interest.

(b) An order entered pursuant to paragraph (a) of this section shall be subject to review by the Commission on its own motion within thirty (30) days after its date.

(c) An initial decision may be made effective immediately, subject to review by the Commission on its own motion within thirty (30) days after its date, when:

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to

file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that it is in the public interest to make the initial decision effective immediately.

§ 2.762 Petition for review.

(a) *Who may file.* A party may within twenty (20) days after the date of an initial decision file a petition for review of the initial decision by the Commission, and a brief in support of the petition.

(b) *Content.* The petition for review shall plainly and concisely state the facts, and the brief shall plainly and concisely state the legal grounds, on which the petitioner bases his claim that he has been aggrieved by the decision of the presiding officer, or that review is required in the public interest, and the relief which the petitioner seeks by review. Ten (10) copies of the petition and brief shall be filed.

(c) *Answer.* Within ten (10) days after the filing of the petition and brief a respondent may file ten (10) copies of an opposing brief.

(d) *Granting of petition.* The petition for review may be granted in the discretion of the Commission, giving due weight to the existence of a substantial question with respect to such considerations as the following:

(1) A finding of a material fact is clearly erroneous;

(2) A necessary legal conclusion is without governing precedent or is a departure from or contrary to established law;

(3) A substantial and important question of law, policy or discretion has been raised;

(4) The conduct of the proceeding involved a prejudicial procedural error; or

(5) Any other consideration which the Commission may deem to be in the public interest.

(e) *Effect of denial.* If the Commission denies the petition, the decision of the presiding officer will thereupon become the final action of the Commission.

(f) *Effect of granting petition.* If the Commission grants the petition, the petitioner shall file exceptions and a brief in support of them within twenty (20) days after service of the order granting the petition. Each party may file an opposing brief within ten (10) days after the service of the exceptions and brief. Ten (10) copies of the exceptions and brief and of each opposing brief shall be filed.

(g) *Exceptions.* Each exception shall relate only to an important procedural or substantive matter presented by the record as limited by the Commission's order granting review; shall be separately numbered; shall identify the part of the decision to which objection is made; and shall specify precisely the portions of the record relied upon. The brief shall state the grounds of the exception, including citation of authori-

ties. Any objection to a ruling, finding, or conclusion which is not made a part of the exceptions will be deemed to be waived.

(h) *Reason for denying relief.* The failure of a petitioner to present clearly, concisely, and accurately whatever is essential to a ready and adequate understanding of his exceptions and arguments will be sufficient reason for denying relief.

§ 2.763 Oral argument.

Oral argument will not be allowed on a petition for review. The Commission may allow oral argument of an appeal after granting a petition for review.

FINAL DECISION

§ 2.770 Final decision.

(a) The Commission will ordinarily consider the whole record on review, but may limit the issues to be reviewed and consider only findings and conclusions to which exceptions have been filed.

(b) The Commission may adopt, modify, or set aside the findings, conclusions and order in the initial decision, and will state the basis of its action. The final decision will be in writing and will include:

(1) A statement of findings and conclusions, with the basis for them on all material issues of fact, law or discretion presented;

(2) All facts officially noticed;

(3) The ruling on each material exception;

(4) The appropriate ruling, order, or denial of relief, with the effective date.

§ 2.771 Petition for reconsideration.

(a) A petition for reconsideration of a final decision may be filed by a party within ten (10) days after the date of the decision. No petition may be filed with respect to an initial decision which has become final through failure to file a petition for review.

(b) The petition for reconsideration shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the petition, and the relief sought. Within seven (7) days after a petition for reconsideration has been filed, any other party may file an answer in opposition to or in support of the petition.

(c) Neither the filing nor the granting of the petition shall stay the decision unless the Commission orders otherwise.

EX PARTE COMMUNICATIONS

§ 2.780 Ex parte communications.

(a) Neither (1) Commissioners, members of their immediate staffs, or other AEC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions will request or entertain off the record except from each other, nor (2) any applicant for or holder of an AEC license or permit, or any officer, employee, representative, or other person directly or indirectly acting in behalf thereof, shall submit off the record to Commissioners or such staff members, officials, and employees, any evidence, explanation, analysis, or advice, whether written or oral, regarding any substantive matter

at issue in a proceeding on the record then pending before the AEC for the issuance, denial, amendment, transfer, renewal, modification, suspension, or revocation of a license or permit. For the purposes of this section, the term "proceeding on the record then pending before the AEC" shall include any application or matter which has been noticed for hearing or concerning which a hearing has been requested pursuant to this part.

(b) Copies of written communications covered by paragraph (a) of this section shall be placed in the AEC public document room and served by the Secretary on the communicator and the parties to the proceeding involved.

(c) A Commissioner, member of his immediate staff, or other AEC official or employee advising the Commissioners in the exercise of their quasi-judicial functions, to whom is attempted any oral communication concerning any substantive matter at issue in a proceeding on the record as described in paragraph (a) of this section, will decline to listen to such communication and will explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof will advise the communicator that a written summary of the conversation will be delivered to the AEC public document room and a copy served by the Secretary of the Commission on the communicator and the parties to the proceeding involved. The recipient of the oral communication thereupon will make a fair, written summary of such communication and deliver such summary to the AEC public document room and serve copies thereof upon the communicator and the parties to the proceeding involved.

(d) This section does not apply to the disposition of ex parte matters authorized by law, or to communications requested by the Commission concerning:

(1) Its proprietary functions.

(2) General health and safety problems and responsibilities of the Commission; or

(3) The status of proceedings.

Subpart H—Rule Making

§ 2.800 Scope of rule making.

This subpart governs the issuance, amendment and repeal of regulations in which participation by interested persons is prescribed under section 4 of the Administrative Procedure Act.

§ 2.801 Initiation of rule making.

Rule making may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person.

§ 2.802 Petition for rule making.

Any interested person may petition the Commission to issue, amend, or rescind any regulation. The petition shall state the substance or text of any proposed regulation or amendment, or shall specify the regulation the rescission or amendment of which is desired, and shall state the basis for the request. The Secretary will assign a doc-

ket number to the petition, deposit a copy in the Public Document Room, and cause notice of the filing of the petition to be published in the FEDERAL REGISTER. Publication will be limited by the requirements of section 181 of the Act and may be limited by order of the Commission.

§ 2.803 Determination of petition.

No hearing will be held on the petition unless the Commission deems it advisable. If the Commission determines that sufficient reason exists, it will publish a notice of proposed rule making. In any other case, it will deny the petition and will notify the petitioner with a simple statement of the grounds of denial.

§ 2.804 Notice of proposed rule making.

(a) When the Commission proposes to adopt, amend, or repeal a regulation it will cause to be published in the FEDERAL REGISTER a notice of proposed rule making, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

(b) The notice will include:

(1) Either the terms or substance of the proposed rule, or a specification of the subjects and issues involved;

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined in the Public Document Room;

(3) The authority under which the regulation is proposed;

(4) The time, place, and nature of the public hearing, if any;

(5) If a hearing is to be held, designation of the presiding officer and any special directions for the conduct of the hearing; and

(6) Such explanatory statement as the Commission may consider appropriate.

(c) The publication or service of notice will be made not less than fifteen (15) days prior to the time fixed for hearing, if any, unless the Commission for good cause stated in the notice provides otherwise.

§ 2.805 Participation by interested persons.

(a) The Commission will afford interested persons an opportunity to participate in rule making through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.

(b) The Commission may hold informal hearings at which interested persons may be heard, adopting procedures which in its judgment will best serve the purpose of the hearing.

§ 2.806 Commission action.

The Commission will incorporate in the notice of adoption of a regulation a concise general statement of its basis and purpose, and will cause the notice and regulation to be published in the FEDERAL REGISTER or served upon affected persons.

§ 2.807 Effective date.

The notice of adoption of a regulation will specify the effective date. Publication or service of the notice and regulation, other than one granting or recognizing exemptions or relieving from restrictions, will be made not less than thirty (30) days prior to the effective date unless the Commission directs otherwise on good cause found and published in the notice of rule making.

AVAILABILITY OF OFFICIAL RECORDS**§ 2.810 Public inspection, exceptions, requests for withholding.**

(a) Except as provided in paragraph (b) of this section, all records of a proceeding subject to this part, and related documents which constitute public records of the Commission as defined in Part 9 of this chapter, will be made available for public inspection at the Public Document Room.

(b) A person who proposes that a document or a part be withheld in whole or in part from public disclosure shall at the time of filing it submit an application for withholding or make timely application thereafter identifying the document or part, and stating reasons why it should be withheld. He shall, as far as possible, incorporate in a separate paper any part sought to be withheld. The Commission may withhold any document or part from public inspection if disclosure of its contents is not required in the public interest and would adversely affect the interest of a person concerned. Withholding from public inspection shall not, however, affect the right, if any, of persons properly and directly concerned to inspect the document. If the applicant fails to comply with the requirements of this paragraph, the Commission will inform him that it intends to deny his application unless he complies with those requirements within the time stated in the notice.

(c) If a request is denied, the Commission will notify an applicant of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the notice, when the document will be placed in the Public Document Room. If, within the time specified in the notice, the applicant requests withdrawal of his application, the document will not be placed in the Public Document Room.

Subpart I—Special Procedures Applicable to Adjudicatory Proceedings Involving Restricted Data**§ 2.900 Purpose.**

This subpart is issued pursuant to section 181 of the Atomic Energy Act of 1954, as amended, to provide such procedures in proceedings subject to this part as will effectively safeguard and prevent disclosure of Restricted Data to unauthorized persons, with minimum impairment of procedural rights.

§ 2.901 Scope.

This subpart applies to all proceedings subject to this part.

§ 2.902 Definitions.

As used in this subpart:

(a) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America, which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(b) "Interested party" means a party having an interest in the issue or issues to which particular Restricted Data is relevant. Normally the interest of a party in an issue may be determined by examination of the notice of hearing, the answers and replies.

(c) The phrase "introduced into a proceeding" refers to the introduction or incorporation of testimony or documentary matter into any part of the official record of a proceeding subject to this part.

§ 2.903 Protection of Restricted Data.

Nothing in this subpart shall relieve any person from safeguarding Restricted Data in accordance with the applicable provisions of laws of the United States and rules, regulations or orders of any Government Agency.

§ 2.904 Classification assistance.

On request of any party to a proceeding or of the presiding officer, the Commission will designate a representative to advise and assist the presiding officer and the parties with respect to security classification of information and the safeguards to be observed.

§ 2.905 Access to Restricted Data for parties; security clearances.

(a) *Access to Restricted Data introduced into proceedings.* (1) Restricted Data which is within a category specified in Appendix A, Part 25 of this chapter, and which is introduced into a proceeding subject to this part, will be made available to any party to the proceeding, to counsel and to such other individuals as a party intends to use in connection with the preparation and presentation of his case, provided that each such person has the required security clearance.

(2) Other Restricted Data introduced into a proceeding subject to this part will be made available to any interested party having the required security clearance; to counsel for an interested party provided the counsel has the required security clearance; and to such additional persons having the required security clearance as the Commission or the presiding officer determines are needed by such party for adequate preparation or presentation of his case. Where the interest of such party will not be prejudiced, the Commission or presiding officer may postpone action upon an application for access under this subparagraph until after a notice of hearing, answers and replies have been filed.

(3) Any party desiring access to Restricted Data introduced into the record of a proceeding subject to this part

should file an application for order granting access pursuant to this section.

(b) *Access to Restricted Data not introduced into proceedings.* (1) On application showing that access to Restricted Data may be required for the preparation of a party's case, and except as provided in paragraph (h) of this section, the Commission or the presiding officer will issue an order granting access to such Restricted Data to the party upon his obtaining the required security clearance, to counsel for the party upon their obtaining the required security clearance, and to such other individuals as may be needed by the party for the preparation and presentation of his case upon their obtaining the required clearance.

(2) Where the interest of the party applying for access will not be prejudiced, the Commission or presiding officer may postpone action on an application pursuant to this paragraph until after a notice of hearing, answers and replies have been filed.

(c) The Commission will consider requests for appropriate security clearances in reasonable numbers pursuant to this section. A reasonable charge will be made by the Commission for costs of security clearance pursuant to this Section.

(d) The presiding officer may certify to the Commission for its consideration and determination any questions relating to access to Restricted Data arising under this section. Any party affected by a determination or order of the presiding officer under this section may appeal forthwith to the Commission from the determination or order. The filing by the regulatory staff of an appeal from an order of a presiding officer granting access to Restricted Data shall stay the order pending determination of the appeal by the Commission.

(e) An application under this section for orders granting access to Restricted Data within a category specified in Appendix A, Part 25 of this chapter, will normally be acted upon by the presiding officer, or if a proceeding is not before a presiding officer, by the Commission. An application for an order granting access to Restricted Data which is not within such a category will be acted upon by the Commission.

(f) To the extent practicable, an application for an order granting access under this section shall describe the subjects of Restricted Data to which access is desired and the level of classification (confidential, secret or other) of the information; the reasons why access to the information is requested; the names of individuals for whom clearances are requested; and the reasons why security clearances are being requested for those individuals.

(g) On the conclusion of a proceeding, the Commission will terminate all orders issued in the proceeding for access to Restricted Data and all security clearances granted pursuant to them; and may issue such orders requiring the disposal of classified matter received pursuant to them or requiring the observance of other procedures to safeguard

such classified matter as it deems necessary to protect Restricted Data.

(h) The Commission may refuse to grant access to Restricted Data which is not within a category specified in Appendix A to Part 25 of this chapter on a determination that the granting of access will be inimical to the common defense and security.

§ 2.906 Obligation of parties to avoid introduction of Restricted Data.

It is the obligation of all parties in a proceeding subject to this part to avoid, where practicable, the introduction of Restricted Data into the proceeding. This obligation rests on each party whether or not all other parties have the required security clearance.

§ 2.907 Notice of intent to introduce Restricted Data.

(a) If, at the time of publication of a notice of hearing, it appears to the regulatory staff that it will be impracticable for it to avoid the introduction of Restricted Data into the proceeding, it will file a notice of intent to introduce Restricted Data.

(b) If, at the time of filing of an answer to the notice of hearing it appears to the party filing that it will be impracticable for the party to avoid the introduction of Restricted Data into the proceeding, the party shall state in the answer a notice of intent to introduce Restricted Data into the proceeding.

(c) If, at any later stage of a proceeding, it appears to any party that it will be impracticable to avoid the introduction of Restricted Data into the proceeding, the party shall give to the other parties prompt written notice of intent to introduce Restricted Data into the proceeding.

(d) Restricted Data shall not be introduced into a proceeding after publication of a notice of hearing unless a notice of intent has been filed in accordance with § 2.908, except as permitted in the discretion of the presiding officer when it is clear that no party or the public interest will be prejudiced.

§ 2.908 Contents of notice of intent to introduce Restricted Data.

(a) A party who intends to introduce Restricted Data shall file a notice of intent with the Secretary. The notice shall be unclassified and, to the extent consistent with classification requirements, shall include the following:

(1) The subject matter of the Restricted Data which it is anticipated will be involved;

(2) The highest level of classification of the information (confidential, secret, or other);

(3) The stage of the proceeding at which he anticipates a need to introduce the information; and

(4) The relevance and materiality of the information to the issues on the proceeding.

(b) In the discretion of the presiding officer, such notice, when required by § 2.907(c), may be given orally on the record.

§ 2.909 Rearrangement or suspension of proceedings.

In any proceeding subject to this part where a party gives a notice of intent to introduce Restricted Data, and the presiding officer determines that any other interested party does not have required security clearances, the presiding officer may in his discretion:

(a) Rearrange the normal order of the proceeding in a manner which gives such interested parties an opportunity to obtain required security clearances with minimum delay in the conduct of the proceeding.

(b) Suspend the proceeding or any portion of it until all interested parties have had opportunity to obtain required security clearances. No proceeding shall be suspended for such reasons for more than 100 days except with the consent of all parties or on a determination by the presiding officer that further suspension of the proceeding would not be contrary to the public interest.

(c) Take such other action as he determines to be in the best interest of all parties and the public.

§ 2.910 Unclassified statements required.

(a) Whenever Restricted Data is offered in evidence in a proceeding, the party offering it shall submit to the presiding officer and to all parties to the proceeding an unclassified statement setting forth the information in the classified matter as accurately and completely as possible.

(b) In accordance with such procedures as may be agreed upon by the parties or prescribed by the presiding officer, and after notice to all parties and opportunity to be heard thereon, the presiding officer shall determine whether the unclassified statement or any portion of it, together with any appropriate modifications suggested by any party, may be substituted for the classified matter or any portion of it without prejudice to the interest of any party or to the public interest.

(c) If the presiding officer determines that the unclassified statement, together with such unclassified modifications as he finds are necessary or appropriate to protect the interest of other parties and the public interest, adequately sets forth information in the classified matter which is relevant and material to the issues in the proceeding, he shall direct that the classified matter be excluded from the record of the proceeding. His determination will be considered by the Commission as a part of the decision in the event of review.

(d) If the presiding officer determines that an unclassified statement does not adequately present the information contained in the classified matter which is relevant and material to the issues in the proceeding, he shall include his reasons in his determination. This determination shall be included as part of the record and will be considered by the Commission in the event of review of the determination.

(e) The presiding officer may postpone all or part of the procedures established

in this section until the reception of all other evidence has been completed. Service of the unclassified statement required in paragraph (a) of this section shall not be postponed if any party does not have access to Restricted Data.

§ 2.911 Admissibility of Restricted Data.

A presiding officer shall not receive any Restricted Data in evidence unless:

(a) The relevance and materiality of the Restricted Data to the issues in the proceeding, and its competence, are clearly established; and

(b) The exclusion of the Restricted Data would prejudice the interests of a party or the public interest.

§ 2.912 Weight to be attached to classified evidence.

In considering the weight and effect of any Restricted Data received in evidence to which an interested party has not had opportunity to receive access, the presiding officer and the Commission shall give to such evidence such weight as is appropriate under the circumstances, taking into consideration any lack of opportunity to rebut or impeach the evidence.

§ 2.913 Review of Restricted Data received in evidence.

At the close of the reception of evidence, the presiding officer shall review the record and shall direct that any Restricted Data be expunged from the record where such expunction would not prejudice the interests of a party or the public interest. Such directions by the presiding officer will be considered by the Commission in the event of review of the determinations of the presiding officer.

§ 2.914 Access under Part 25 of this chapter not affected.

Nothing in this subpart or any order issued in a proceeding pursuant to the regulations in this subpart shall be deemed to abridge access to Restricted Data to which any person may be entitled under the regulations in Part 25 of this chapter.

[F.R. Doc. 62-363; Filed, Jan. 12, 1962; 8:45 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 4—POLITICAL ACTIVITY

Investigation and Waiver of Hearing

Paragraph (b) of § 4.201 and § 4.206 of Subpart A are amended as set out below.

§ 4.201 Investigation.

(b) During the course of the investigation, the employee shall be afforded an opportunity to make a statement concerning the substance of the political activity disclosed by the investigation

and to furnish the names of witnesses he wishes to have interviewed.

§ 4.206 Waiver of hearing.

If the employee waives a hearing and the General Counsel agrees to such waiver, the case shall be submitted, on the record, to the Commission.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633; E.O. 10577, 19 F.R. 7521; 3 CFR 1954 Supp.)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 62-419; Filed, Jan. 12, 1962; 8:48 a.m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Health, Education, and Welfare

Effective upon publication in the FEDERAL REGISTER, paragraph (d)(3) of § 6.114 is amended as set out below.

§ 6.114 Department of Health, Education, and Welfare.

(d) Social Security Administration.

(3) Not to exceed 100 positions directly concerned with programs conducted by the Department in connection with the problems of Cuban refugees: *Provided*, That employment under this authority shall be temporary and no employment shall be made under it after June 30, 1963.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 62-418; Filed, Jan. 12, 1962; 8:48 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 2]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.302 Navel Orange Regulation 2.

(a) Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel

Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 11, 1962.

(b) Order. (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., January 14, 1962, and ending at 12:01 a.m., P.s.t., January 21, 1962, are hereby fixed as follows:

- (i) District 1: 300,000 cartons;
 - (ii) District 2: 300,000 cartons;
 - (iii) District 3: unlimited movement;
 - (iv) District 4: unlimited movement.
- (2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same

meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: January 12, 1962.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 62-493; Filed, Jan. 12, 1962; 11:21 a.m.]

[Grapefruit Reg. 1]

PART 909—GRAPEFRUIT GROWN IN ARIZONA; IN IMPERIAL COUNTY, CALIF., AND IN THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF WHITE WATER, CALIF.

Limitation of Shipments

§ 909.301 Grapefruit Regulation 1.

(a) Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 909, as amended (7 CFR Part 909), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of White Water, California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the Administrative Committee (established under the aforesaid amended marketing agreement and order), and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date. The Administrative Committee held an open meeting on January 4, 1962, to consider recommendations for a regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such open meeting; necessary supplemental economic and statistical information upon which this recommended regulation is based were received by the Fruit Branch on January 9, 1962; information regarding the provisions of the regulation recommended by the committee has been disseminated to shippers of grapefruit, grown as aforesaid, and this