

An Overview of the Nuclear Regulatory Commission Licensing Process for the Yucca Mountain Repository

Pre-Licensing Activities

The Nuclear Regulatory Commission's (NRC) regulatory program for high-level waste disposal is currently focused on pre-licensing activities and on activities to determine how NRC will regulate the high-level waste repository throughout its lifecycle if a license is issued to the Department of Energy (DOE).

Before submitting a license application to the NRC, DOE must complete a site characterization process. The DOE has decided to recommend the site. The site recommendation process includes preparation of an environmental impact statement. If the site is approved by the President and Congress, DOE must then submit a license application to the NRC. These steps are outlined in a schedule.

Site Characterization Process

The Department of Energy's (DOE) 1988 Site Characterization Plan for Yucca Mountain established the initial basis for the many engineering and scientific investigations of the site. It has been conducting site characterization to gather enough information about the Yucca Mountain site to evaluate the waste isolation capabilities. In 1991, the State of Nevada granted the DOE the permits necessary to proceed with certain site characterization activities. These activities included the excavation of test pits and trenches, drilling bore holes, and monitoring ground water.

In September 1994, the DOE began excavation of the exploratory studies facility using a tunnel-boring machine. The initial design called for a continuous tunnel 7.6 meters (25 feet) in diameter. The tunnel was completed in April 1997. The tunnel begins at the North Portal and extends to the northwest approximately 2000 meters (1.24 miles). The tunnel then transitions into an approximately 60 degree turn to the south. The section from the North Portal to the 60-degree turn is known as the "North Ramp". The turn from the "North Ramp" leads to a main tunnel, at a depth of 300 meters (984 feet) below the surface. The main tunnel has a north-south alignment and extends south approximately 3000 meters (1.86 miles). The main tunnel ends in a 90-degree turn. From this turn the tunnel travels east about 1300 meters (0.8 miles) and emerges at the South Portal. The tunnel machine has bored through a series of geologic features including a structural feature known as the Bow Ridge Fault. Within the tunnel are seven testing alcoves and four test niches that are being used to investigate the hydrologic, hydrochemical, and thermo-mechanical properties of the rocks underlying Yucca Mountain.

In December 1997, the DOE began excavation of a smaller exploratory tunnel (5.5 meters/18 feet) across the main tunnel. This smaller tunnel is known as the "east-west" or "cross" drift and runs almost perpendicular to the North Ramp. The "cross" drift begins to

the west of the Bow Ridge Fault, and crosses over and above the north-south main tunnel. It is about 2600 meters (1.6 miles) in length and ends near the Solitario Canyon Fault. The "cross" drift will also contain instrumentation for scientific tests and should provide additional data on the sub-surface geology of Yucca Mountain to the west of the main tunnel.

What is NRC's Role?

- The Nuclear Waste Policy Act of 1982 requires NRC to provide preliminary comments on certain information in any Department of Energy (DOE) site recommendation.
- NRC's comments will be "preliminary" and will address the extent to which the DOE information seems to be sufficient for inclusion in any potential license application.
- NRC will comment on the sufficiency of the at-depth site characterization analysis, the waste form and packaging proposal, and what, if any, additional DOE data or analyses are needed.
- DOE must make NRC's preliminary comments part of DOE's site recommendation process.
- NRC will perform a detailed licensing review later, if DOE submits a license application.

How will NRC's comments be used?

NRC's preliminary comments will provide an independent indication to the President and the Congress on whether the DOE has acquired, developed, and assembled sufficient information for a license application.

What will DOE's site recommendation include?

The law requires the Secretary of Energy to submit to the President of the United States a site recommendation report that consists of the following seven sections:

1. A description of the proposed repository.
2. A description of the waste form, waste package, and their interaction with the geologic system.
3. A discussion of safety-related site characterization data.
4. A final environmental impact statement.
5. Preliminary comments of the NRC on whether the extent of at-depth site characterization and the description of the waste form proposal are sufficient for inclusion in a potential license application.

6. Views of the Governor and legislature of any State, or the governing body of any affected Indian tribe, and the response of the Secretary of Energy to those views.
7. Any impact report submitted under the Act by the State of Nevada.

If the President accepts the site recommendation, the report is forwarded to the Congress. On February 15, 2002, the President notified the Congress that he considers Yucca Mountain qualified for a construction permit application. If approved by the Congress, DOE will prepare a license application seeking NRC authorization to construct a repository at Yucca Mountain.

What is the Science and Engineering Report?

- If DOE decides to recommend the Yucca Mountain site, then a DOE report, the Science and Engineering Report, will be submitted to the public for comment. Because DOE decided to recommend the site, DOE held public hearings on the report.
- The Science and Engineering Report will inform the public of the technical reason why DOE believes that Yucca Mountain is suitable as a potential repository site.
- In addition to descriptions of the proposed repository, waste form, waste package, and safety-related site characterization data (items 1-3 above), the Science and Engineering Report will describe and discuss analyses used to predict repository performance.
- The Science and Engineering Report was one of a number of DOE documents that NRC reviewed during the development of NRC's preliminary comments on DOE's site recommendation.

Schedule for Constructing a Proposed High-Level Waste Repository

If the proposed high-level waste repository is approved by the President and Congress, four major steps—site characterization, site approval, licensing review, and construction—would have to be completed before operation could begin. These four steps would span more than 20 years as illustrated in the draft schedule diagram (draft schedule diagram and timetable included on separate page).

Licensing Process

If the site is approved by the President and Congress, the Nuclear Waste Policy Act specifies that licensing of a geologic repository will occur in three phases. In the **first phase**, the Department of Energy (DOE) would apply to the NRC for authorization to construct a geologic repository. Once a construction authorization request is submitted, by law, the NRC will have three years to perform its review, conduct a public hearing, and reach a construction authorization decision by an independent Licensing Board. To comply with this schedule, the NRC is already reviewing the DOE's site characterization activities and investigations to identify and resolve potential licensing issues. However,

during the licensing proceeding itself, all issues, including those previously resolved, can potentially be reopened by the Licensing Board and become issues of contention during the hearing. Should a license for construction authorization be granted by the NRC, then the process would enter the second phase.

In the second phase, as construction of the repository nears completion, the DOE will request a license to receive high-level radioactive waste. If the NRC grants that license, the DOE will begin placing high-level radioactive waste into the repository. **In the third phase**, when the repository is full, the DOE will apply for a license amendment to decommission and permanently close the disposal facility.

For each phase of the licensing process, the same licensing procedures are followed by the NRC. For instance, for the construction authorization phase, the NRC process for licensing a high-level waste repository includes an initial review of the application to learn whether it is complete. If the application is incomplete it will be returned to DOE. If the application is complete, it will be docketed, and a public notice will be published. The public notice provides information on how the application can be accessed by the public, and it will offer the opportunity for public intervention in a public hearing on the application. After the NRC reviews the application and completes a hearing it will make a decision on whether to authorize construction of a high-level waste repository by the DOE.

Hearing Process

If disputed matters were involved in the licensing of a high-level waste nuclear repository, the NRC could conduct hearings. Stakeholders affected by such a facility would be afforded an opportunity to participate in a hearing. The parties and potential parties to the hearing on the DOE application will make their documents available via the Internet before the DOE application is submitted to the NRC. The Atomic Safety and Licensing Board Panel of the NRC has developed the Licensing Support Network. The Licensing Support Network provides a single place where the parties and potential parties to the licensing hearing can search for documents from any or all of those collections in a uniform way.

High-Level Waste Disposal Oversight

Currently the NRC has no direct safety oversight responsibilities for the potential Yucca Mountain repository, as there is no licensee. During the pre-licensing phase the NRC maintains an Onsite Representative Office (<http://www.nrc.gov/who-we-are/locations/hlw-office.html>) in Las Vegas, Nevada.

See the Onsite Representative Responsibilities page (<http://www.nrc.gov/waste/hlw-disposal/public-involvement/on-site-rep.html>) for more information about the activities of this office, including reports published by the Onsite Representatives (<http://www.nrc.gov/waste/hlw-disposal/public-involvement/on-site-rep/reports.html>) since January 2000.

In the future, if the DOE applies for a license, the NRC will have an oversight program. A description of how NRC conducts its oversight program for the high-level waste

program, which could include inspection, will be available should the DOE apply for a license.

Public Involvement in NRC's High-Level Waste Program

Public involvement in NRC activities creates effective regulations. The NRC is interested in the public's views on the safe regulation of a repository, and the NRC provides opportunities for citizens to communicate their opinions. The NRC seeks public involvement throughout the regulatory process so that the safety concerns of all affected people can be promptly addressed.

This page describes how the public can participate in NRC's activities associated with high-level waste disposal and the potential Yucca Mountain repository. It also provides informational materials and resources so that public participation can be more effective. More information is available at the NRC public involvement page (<http://www.nrc.gov/public-involve.html>) and in NUREG/BR-0215 (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0215/r1/>) "Public Involvement in the Regulatory Process." (Discussed in the following pages)

Public Web Conferences

At NRC's rulemaking (<http://ruleforum.llnl.gov/>) and technical conferences (<http://techconf.llnl.gov/>) Web sites, the public can be involved by providing comments on NRC documents, including proposed regulations, and during the development of the Yucca Mountain Review Plan.

Rulemakings

Developing regulations is called "rulemaking." All rulemakings provide the public with at least one opportunity for comment. When a proposed rule is developed, it is published in the Federal Register for public comment as explained under Public Involvement in Rulemaking (<http://www.nrc.gov/what-we-do/regulatory/rulemaking/public-involvement.html>). This will also be discussed in the following pages.

The NRC published proposed regulations for Yucca Mountain at 10 CFR Part 63 in February 1999. Public comments received during 1999 were factored into the development of the final rule, which, like the proposed rule, was published in the Federal Register and is available at 10 CFR Part 63 (<http://www.nrc.gov/reading-rm/doc-collections/cfr/part063/>).

The NRC is proposing to amend its regulations governing the disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada, to define the term "unlikely" in quantitative terms. The NRC proposes this amendment to clarify how it plans to implement two of the final environmental standards for Yucca Mountain issued by the U.S. Environmental Protection Agency (EPA). The comment period for this amendment expires April 10, 2002. For more information see the Federal Register Notice (<http://www.nrc.gov/waste/hlw-disposal/frv67n17.pdf>).

Yucca Mountain Review Plan

The NRC staff will invite public comment on its draft plan for reviewing an application for a geologic repository at Yucca Mountain through its technical conference (<http://techconf.llnl.gov/>) Web site. This plan will guide the NRC staff's safety review of a potential license application and will implement the NRC's regulations in 10 CFR Part 63 for reviewing key technical issues, as they relate to repository safety.

Meetings

As part of the ongoing dialog between the public and NRC, the public can attend one of the numerous meetings open to the public that continue to be held at several locations. These include meetings with the public in the vicinity of a licensed facility, technical meetings with DOE, and meetings with trade organizations and public interest groups.

When NRC staff meetings address issues of local interest, the meetings are generally held near the proposed facility to make it easier for the public to participate. For example, the NRC staff may hold public meetings in Nevada, near Yucca Mountain, to explain the NRC's role as it relates to the DOE's planned activities and to answer questions posed by Nevada citizens. NRC announces major meetings in press releases issued to the news media and mailed to more than 1,000 addressees.

When the NRC staff meets with DOE to discuss safety matters, the meetings are generally open for public observation. In some cases, the public may be able to provide comments during these meetings. An agreement between DOE and NRC that governs interactions (<http://www.nrc.gov/waste/hlw-disposal/reg-initiatives/agreement-doe-nrc.pdf>) between the two agencies during the pre-licensing phase is available. This agreement discusses the extent of public involvement permitted in these interagency meetings. Staff meetings are announced at least 10 calendar days in advance.

Meeting Schedule

- NRC Public Meeting Schedule page (<http://www.nrc.gov/public-involve/public-meetings/meeting-schedule.html>) Notices for Commission, Advisory Committee, and many staff meetings are published in the Federal Register, and are also available on NRC's main public meetings schedule page. Look for meetings on the high-level waste repository under Nuclear Materials Safety and Safeguards (NMSS).
- Schedule of Meetings Related to High-Level Waste (<http://www.nrc.gov/waste/hlw-disposal/public-involvement/mtg-schedule.html>) - Because of the high public interest in the high-level waste repository, the NRC also maintains a separate schedule of meetings for the high-level waste program. This schedule includes public meetings in Nevada as well as interagency meetings between NRC and DOE that are open to public observation.

Meeting Archive

The following meeting records are available:

Public Outreach Meetings

- Transcripts and Presentations (<http://www.nrc.gov/waste/hlw-disposal/public-involvement/outreach>)

Meetings Between NRC and DOE

- Meeting Summaries and Agreements (<http://www.nrc.gov/waste/hlw-disposal/public-involvement/NRC/DOE>)

Participation in the Licensing Process

Through the Atomic Energy Act, Congress made it possible for the public to get a full and fair hearing on civilian nuclear matters. Should the President approve DOE's site recommendation, the decision on whether to license the DOE to construct and operate a repository at Yucca Mountain, Nevada, will, therefore, be deliberated in a public proceeding. The public may participate in the licensing proceeding by submitting written comments, by making oral presentations before a panel of independent judges or the Commissioners, and, in some cases, by becoming a party or "intervenor" to the proceeding. Parties to NRC licensing proceedings may appeal Commission decisions to the Federal Circuit Court of Appeals and, subsequently, in some cases, to the Supreme Court of the United States. See Public Involvement in Licensing (<http://www.nrc.gov/what-we-do/regulatory/involve>) and Public Involvement in Hearings (<http://www.nrc.gov/what-we-do/regulatory/adjudicatory/hearing.html>) for more information.

Petitions for Enforcement

If the DOE requests, and if it is granted a license to construct and operate a repository at Yucca Mountain, an individual member of the public or citizen's group may raise health and safety issues in a petition to the NRC to take specific enforcement action regarding the repository. If warranted, the NRC may take action to modify, suspend, or revoke DOE's license or could take other appropriate enforcement action to resolve a problem identified by a petition. For more information, see Public Involvement in Enforcement (<http://www.nrc.gov/what-we-do/regulatory/enforcement/public-involvement.html>).

High-Level Waste On-Site Representatives

The NRC maintains a local on-site representatives office (<http://www.nrc.gov/who-we-are/locations/hlw-office.html>), with a small staff, in Las Vegas, Nevada. Responsibilities of the On-Site Representatives (<http://www.nrc.gov/waste/hlw-disposal/public-involvement/on-site-rep.html>) include observing the DOE's site characterization activities at Yucca Mountain. If the DOE program advances, the NRC may examine the need to expand the scope of activities conducted out of the on-site representatives office. If the DOE requests and is granted a license to construct a repository, NRC will locate two or more resident inspectors at the Yucca Mountain site. The public is encouraged to contact

the on-site representatives (<http://www.nrc.gov/waste/hlw-disposal/public-involvement/on-site-rep/contact-on-site-rep.html>) to send comments or ask questions about the proposed Yucca Mountain repository or other aspects of NRC's High Level Waste program

Public Involvement in Licensing

Involvement in Licensing Actions

The public can become involved in the licensing of a facility, and can make their views known to the Commission at various stages in the process. In the pre-licensing stage, the public is notified through the *Federal Register*, press releases, and local advertisements that an application has been received.

Notices regarding opportunities for hearings or public comment on all reactor licensing actions, including amendments to a facility's operating license, or license renewal proceedings are published in the *Federal Register*.

If local interest is strong, the NRC may hold public meetings in the vicinity of a proposed facility. Notices of meetings may be mailed to citizens' groups and civic and government leaders in the community and may be advertised in local newspapers.

For nuclear power plants, individuals who are directly affected by the proceeding may participate in a formal hearing. However, for materials licensees and fuel facilities, most hearings are informal. See Public Involvement in Hearings and the Licensing Actions Section (<http://www.nrc.gov/public-involve/license>) of the Documents for Comment page for more information on how to participate.

Involvement in Environmental Impact Review

NRC considers impacts on the environment while reviewing any proposals for new, major facilities, or other major actions. An Environmental Assessment is usually prepared, which describes the need for a proposed action and a list of the agencies and experts consulted. If the assessment indicates the proposed facility or action will have a significant effect on the environment, an Environmental Impact Statement is also developed by the NRC staff. Both documents are published in the *Federal Register*.

The Environmental Impact Statement includes information on the physical characteristics of the area - geology, water, and air - the ability of the transportation systems to support the facility, and local population data.

Scoping meetings are held in the vicinity of the affected community to provide a forum for members of the public to express their opinion and provide information for the environmental review. These meetings are often held to help NRC identify issues to be addressed in an environmental impact statement and typically involve state and local agencies, Indian Tribes, or other interested people who request participation.

Public Involvement in Hearings

The NRC conducts hearings on disputed matters involved in the licensing of nuclear reactors, nuclear materials, and nuclear materials facilities. Hearings are also available to contest civil penalties for infractions of NRC regulations or staff orders directing that some action be taken. The NRC regulations that govern the hearing process are in Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders (Part 2 of Title 10 of the Code of Federal Regulations (<http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/>)).

Who Can Participate in a Hearing

Individuals or entities whose interests are affected by an NRC licensing or enforcement action may participate in hearings

How to Learn about Opportunities for Hearings

When NRC licensing actions involve nuclear reactors, a "Notice of Opportunity for Hearing" will be published in the *Federal Register*. When licensing actions involve nuclear materials or nuclear materials facilities, frequently notices are not published. If a *Federal Register* notice of opportunity for a hearing is not published, members of the public may request a hearing and intervention, at the earliest of--

- 30 days after the requestor receives actual notice of a pending application;
- 30 days after the requestor receives actual notice of an agency action granting an application in whole or in part; or
- 180 days after the NRC action granting the application in whole or in part.

Types of Participation

There are three ways to participate in the NRC hearing process. An eligible individual or entity can participate by

- requesting intervention and a hearing
- requesting an opportunity to make an oral limited appearance
- submitting a written limited appearance statement

How to Participate

To be granted a hearing on a concern with a licensing action, you must demonstrate that you will be affected by the licensing action and request a hearing as required by 10 CFR Part 2 ((<http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/>)).

To comply with this regulation, you file a petition to intervene in the hearing within 30 days of NRC's publications of a notice in the *Federal Register* of a licensing action. See

the following sections to learn more about participating in a hearing: 10 CFR 2.714 (<http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0714.html>) and 10 CFR 2.1205 (<http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-1205.html>). Both of these sections are included in the following pages.

If you do not wish to intervene in a hearing as a full party, you can participate by submitting a written "limited appearance" statement for consideration or by making a short oral "limited appearance" statement at the hearing if such an opportunity is provided by the presiding official.

You can request intervention and a hearing, request an opportunity to make an oral limited appearance, or submit written limited appearance statements by mail, telegram, or facsimile or deliver them to the NRC's Public Document Room.

Mailing address:

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Telegraph address:

Office of the Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852-2738

Facsimile number:

301-415-1101

Delivery address:

Public Document Room
11555 Rockville Pike (first floor)
Rockville, Maryland (directly across from White Flint metro)
Hours: Monday through Friday, 7:45 a.m. to 4:15 p.m., except on Federal holidays.

§2.714 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene. In a proceeding noticed pursuant to §2.105, any person whose interest may be affected may also request a hearing. The petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, or as provided in §2.102(d)(3). Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d)(1) of this section:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

(2) The petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d)(1) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

(3) Any person who has filed a petition for leave to intervene or who has been admitted as a party pursuant to this section may amend his petition for leave to intervene. A petition may be amended without prior approval of the presiding officer at any time up to fifteen (15) days prior to the holding of the special prehearing conference pursuant to §2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference. After this time a petition may be amended only with approval of the presiding officer, based on a balancing of the factors specified in paragraph (a)(1) of this section. Such an amended petition for leave to intervene must satisfy the requirements of this paragraph (a) of this section pertaining to specificity.

(b)(1) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to §2.751a, or if no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his or her petition to intervene that must include a list of the contentions which petitioner seeks to have litigated in the hearing. A petitioner who fails to file a supplement that satisfies the requirements of paragraph (b)(2) of this section with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

(2) Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

(iii) Sufficient information (which may include information pursuant to paragraphs (b)(2)(i) and (ii) of this section) to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

(c) Any party to a proceeding may file an answer to a petition for leave to intervene or a supplement thereto within ten (10) days after service of the petition or supplement, with particular attention to the factors set forth in paragraph (d)(1) of this section. The staff may file such an answer within fifteen (15) days after service of the petition or supplement.

(d) The Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by the State in which such area is located and by any affected Indian Tribe as defined in part 60 or 63 of this chapter.

(1) A petition for leave to intervene or a request for a hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section; or

(ii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

(e) If the Commission or the presiding officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis

of briefs or oral argument according to a schedule determined by the Commission or presiding officer.

(f) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, presiding officer or the designated atomic safety and licensing board may direct in the interests of:

- (1) Restricting irrelevant, duplicative, or repetitive evidence and argument,
- (2) Having common interests represented by a spokesman, and
- (3) Retaining authority to determine priorities and control the compass of the hearing.

(g) In any case in which, after consideration of the factors set forth in paragraph (d)(1) of this section, the Commission or the presiding officer finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention shall limit his participation accordingly.

(h) A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to paragraph (f) of this section.

(i) Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

(j) The provisions of this section do not apply to license applications docketed under subpart J of this part.

[37 FR 15132, July 28, 1972, as amended at 37 FR 28711, Dec. 29, 1972; 39 FR 17972, May 22, 1974; 43 FR 17801, Apr. 26, 1978; 44 FR 4459, Jan. 22, 1979; 51 FR 27162, July 30, 1986; 54 FR 14944, Apr. 14, 1989; 54 FR 23740, June 2, 1989; 54 FR 33180, Aug. 11, 1989; 54 FR 39728, Sept. 28, 1989]

§2.1205 Request for a hearing; petition for leave to intervene.

(a) Any person whose interest may be affected by a proceeding for the grant, transfer, renewal, or licensee-initiated amendment of a license subject to this subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, a license transfer, or a license renewal who is issued a notice of proposed denial or a notice of denial and who desires a hearing shall file the request for the hearing within the time specified in §2.103 in all cases. An applicant may include in the request for hearing a request that the presiding officer recommend to the Commission that procedures other than those authorized under this subpart be used in the proceeding, provided that the applicant identifies the special factual circumstances or issues which support the use of other procedures.

(c) For amendments of Part 50 licenses under §2.1201(a)(3), a notice of receipt of the application, with reference to the opportunity for a hearing under the procedures set forth

in this subpart, must be published in the Federal Register at least 30 days prior to issuance of the requested amendment by the Commission.

(d) A person, other than an applicant, shall file a request for a hearing within --

(1) Thirty days of the agency's publication in the Federal Register of a notice referring or relating to an application or the licensing action requested by an application, which must include a reference to the opportunity for a hearing under the procedures set forth in this subpart. With respect to an amendment described in §2.1201(a)(3), other than the one to terminate the license, the Commission, prior to issuance of the requested amendment, will follow the procedures in §50.91 and §50.92(c) to the extent necessary to make a determination on whether the amendment involves a significant hazards consideration. If the Commission finds there are significant hazards considerations involved in the requested amendment, the amendment will not be issued until any hearings under this paragraph are completed.

(2) If a Federal Register notice is not published in accordance with paragraph (d)(1), the earliest of --

(i) Thirty days after the requester receives actual notice of a pending application, or

(ii) Thirty days after the requester receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty days after agency action granting an application in whole or in part.

(e) The request for a hearing filed by a person other than an applicant must describe in detail --

(1) The interest of the requestor in the proceeding;

(2) How the interests may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in paragraph (h) of this section;

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with paragraph (d) of this section.

(f) Each request for a hearing must be served, by delivering it personally or by mail to --

(1) The applicant (unless the requestor is the applicant); and

(2) The NRC Staff, by delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(g) Within ten (10) days of service of a request for a hearing filed under paragraph (d) of this section, the applicant may file an answer. The NRC staff, if it chooses or if it is ordered to participate as a party under Sec. 2.1213, may file an answer to a request for a hearing within ten (10) days of the designation of the presiding officer.

(h) In ruling on a request for a hearing filed under paragraph (d) of this section, the presiding officer shall determine that the specified areas of concern are germane to the subject matter of the proceeding and that the petition is timely. The presiding officer also shall determine that the requestor meets the judicial standards for standing and shall consider, among other factors --

(1) The nature of the requestor's right under the Act to be made a party to the proceeding;

(2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and

(3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

(i) If a hearing request filed under paragraph (b) of this section is granted, the applicant and the NRC staff shall be parties to the proceeding. If a hearing request filed under paragraph (c) or (d) of this section is granted, the requestor shall be a party to the proceeding along with the applicant and the NRC staff, if the NRC staff chooses or is ordered to participate as a party in accordance with §2.1213.

(j) If a request for hearing is granted and a notice of the kind described in paragraph (d)(1) previously has not been published in the Federal Register, a notice of hearing must be published in the Federal Register stating --

(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;

(4) The time within which any other person whose interest may be affected by the proceeding may petition for leave to intervene, as specified in paragraph (j) of this section; and

(5) The time within which a request to participate under §2.1211(b) must be filed.

(k) Any petition for leave to intervene must be filed within 30 days of the date of publication of the notice of hearing. The petition must set forth the information required under paragraph (e) of this section.

(1) A petition for leave to intervene must be served upon the applicant. The petition also must be served upon the NRC staff --

(i) By delivery to the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(ii) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(2) Within ten (10) days of service of a petition for leave to intervene, the applicant and the NRC staff, if the staff chooses or is ordered to participate as a party in accordance with §2.1213, may file an answer.

(3) Thereafter, the petition for leave to intervene must be ruled upon by the presiding officer, taking into account the matters set forth in paragraph (h) of this section.

(4) If the petition is granted, the petitioner becomes a party to the proceeding.

(1)(1) A request for a hearing or a petition for leave to intervene found by the presiding officer to be untimely under paragraph (d) or (k) of this section will be entertained only upon determination by the Commission or the presiding officer that the requestor or petitioner has established that --

(i) The delay in filing the request for a hearing or the petition for leave to intervene was excusable; and

(ii) The grant of the request for a hearing or the petition for leave to intervene will not result in undue prejudice or undue injury to any other participant in the proceeding, including the applicant and the NRC staff, if the staff chooses or is ordered to participate as a party in accordance with §2.1213.

(2) If the request for a hearing on the petition for leave to intervene is found to be untimely and the requestor or petitioner fails to establish that it otherwise should be entertained on the paragraph (1)(1) of this section, the request or petition will be treated as a petition under §2.206 and referred for appropriate disposition.

(m) The filing or granting of a request for a hearing or petition for leave to intervene need not delay NRC staff action regarding an application for a licensing action covered by this subpart.

(n) An order granting a request for a hearing or a petition for leave to intervene may condition or limit participation in the interest of avoiding repetitive factual presentations and argument.

(o) If the presiding officer denies a request for a hearing or a petition for leave to intervene in its entirety, the action is appealable within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been granted in whole or in part. If a request for a hearing or a petition for leave to intervene is granted, parties other than the requestor or petitioner may appeal that action within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been denied in its entirety. An appeal may be taken by filing and serving upon all parties a statement that succinctly sets out, with supporting argument, the errors alleged. The appeal may be supported or opposed by any party by filing a counter-statement within fifteen (15) days of the service of the appeal brief.

[54 FR 8276, Feb. 28, 1989, as amended at 55 FR 36806, Sept. 7, 1990; 59 FR 29189, June 6, 1994; 61 FR 39297, July 29, 1996]