(References are to Chapter Title and Page Number.)

<u>Chapter</u>	<u>Abbreviation</u>
Policy Statements	PS
Applications for License/Permit	Ар
Prehearing Matters	Pre
Hearings	Н
Post Hearing Matters	APP
General Matters	GM

NOTE TO USERS

POLICY STATEMENTS

Conduct of Adjudicatory Proceedings (1998)
Camera Coverage of Hearings (1978)
Investigations, Inspections, and Adjudicatory Proceedings (1984)
Alternative Means of Dispute Resolution (1992)

1.0	APPLICATION FOR LICENSE/PERMIT	Ap 1
1.1	<u>Applicants</u>	Ap 1
1.2	Renewal Applications	Ap 1
1.3	Applications for Early Site Review	Ap 2
1.4	Application for License Transfer	Ap 2
1.5	Form of Application for Construction Permit/Operating	
	<u>License</u>	Ap 3
1.5.1	Form of Application for Initial License/Permit	Ap 3
1.5.2	Form of Renewal Application for License/Permit (Reserved)	Ap 3
1.6	Contents of Application	Ар 3
1.6.1	Incomplete Applications	Ap 3
1.6.2	Material False Statements	Ap 4
1.7	Docketing of License/Permit Application	Ap 6
1.8	Notice of License/Permit Application	Ap 6
1.8.1	Publication of Notice in Federal Register	Ap 6
1.8.2	Amended Notice After Addition of New Owners (Reserved)	Ap 7
183	Notice on License Renewal (Reserved)	An 7

1.9	Staff Review of License/Permit Application	Ap 7
1.10	Withdrawal of Application for License/Permit/Transfer	Ap 10
1.10.1	Withdrawal Without Prejudice	Ap 12
1.10.2	Withdrawal With Prejudice	Ap 13
1.11	Abandonment of Application for License/Permit	Ap 13
2.0	PREHEARING MATTERS	Pre 1
2.1	Scheduling of Hearings (See Section 3.3)	Pre 1
2.2	Necessity of Hearing	Pre 1
2.2.1	Materials License Hearings	Pre 1
2.2.2	Operating License/Amendment Hearings	Pre 2
2.2.3	Hearings on Exemptions	Pre 3
2.2.4	License Transfer Hearings	Pre 3
2.2.5	Hearings on Miscellaneous Matters	Pre 3
2.3	Location of Hearing	Pre 4
2.3.1	Public Interest Requirements Affecting Hearing Location (Reserved)	Pre 4
2.3.2	Convenience of Litigants Affecting Hearing Location (See Section 3.3.5.2)	Pre 4
2.4	Issues for Hearing (See Sections 3.4 to 3.4.6)	Pre 4
2.5	Notice of Hearing	Pre 4
2.5.1	Contents of Notice of Hearing	Pre 5
2.5.2	Adequacy of Notice of Hearing	Pre 5
2.5.3	Publication of Notice of Hearing in Federal Register	Pre 5
2.5.4	Requirement to Renotice	Pre 6
2.6	Prehearing Conferences	Pre 6
2.6.1	Transcripts of Prehearing Conferences	Pre 7
2.6.2	Prehearing Conference Order	Pre 7
2.6.2.1	Effect of Prehearing Conference Order	Pre 7
2.6.2.2	Objections to Prehearing Conference Order	Pre 7
2.6.2.3	Appeal from Prehearing Conference Order	Pre 7
2.7	<u>Television Coverage of Prehearing Conferences</u> (See Section 6.32)	Pre 7
2.8	Conference Calls	Pre 7
2.9	Prehearing Motions	Pre 8
TABLE OF	CONTENTS	JANUARY 2005

2.9.1	Prehearing Motions Challenging ASLB Composition	Pre 8
2.9.1.1	Contents of Motion Challenging ASLB Composition	Pre 8
2.9.1.2	Evidence of Bias in Challenges to ASLB Composition	Pre 9
2.9.1.3	Waiver of Challenges to ASLB Composition	Pre 9
2.10	<u>Intervention</u>	Pre 9
2.10.1	General Policy on Intervention	Pre 9
2.10.2	Intervenor's Need for Counsel	Pre 10
2.10.3	Petitions to Intervene	Pre 11
2.10.3.1	Pleading Requirements	Pre 13
2.10.3.2	Defects in Pleadings	Pre 14
2.10.3.3	Time Limits/Late Petitions	Pre 15
2.10.3.3.1	Time for Filing Intervention Petitions	Pre 16
2.10.3.3.1.A	Timeliness of Amendments to Intervention Petitions	Pre 17
2.10.3.3.2	Sufficiency of Notice of Time Limits on Intervention	Pre 17
2.10.3.3.3	Consideration of Untimely Petitions to Intervene	Pre 18
2.10.3.3.3.A	Factor #1–Good Cause for Late Filing	Pre 22
2.10.3.3.3.B	Factor #2-	Pre 27
2.10.3.3.3.C	Factor #3-	Pre 27
2.10.3.3.3.D	Factor #4-	Pre 27
2.10.3.3.3.E	Factor #5–Other Means for Protecting Petitioner's Interests	Pre 28
2.10.3.3.3.F	Factor #6–Extent Petitioner's Interests will be Represented by	
	Other Parties	Pre 29
2.10.3.3.3.G	Factor #7–Extent Participation Will Broaden Issues or Delay	
	the Proceeding	Pre 30
2.10.3.3.3.H	Factor #8–Ability of Petitioner to Assist in Developing Record	Pre 32
2.10.3.3.4	Appeals from Rulings on Late Intervention	Pre 33
2.10.3.3.5	Mootness of Petitions to Intervene	Pre 34
2.10.3.4	Amendment of Petition Expanding Scope of Intervention	Pre 34
2.10.3.5	Withdrawal of Petition to Intervene	Pre 34
2.10.3.6	Intervention in Antitrust Proceedings	Pre 36
2.10.4	Interest and Standing for Intervention	Pre 37
2.10.4.1	Judicial Standing to Intervene	Pre 40
2.10.4.1.1	"Injury-in-Fact" and "Zone of Interest" Tests for	
	Standing to Intervene	Pre 43
2.10.4.1.1.1	"Injury-in-Fact" Test	Pre 46
2.10.4.1.1.1.A	Future/Hypothetical/Academic Injury	Pre 48
2.10.4.1.1.1.B	B Economic/Competitive Injury	Pre 49
2.10.4.1.1.1.C	C Health and Safety/Environmental Injury	Pre 51
2.10.4.1.1.1.	Injury to Legal and/or Constitutional Rights	Pre 52
2.10.4.1.1.1.E	Injury Due to Proximity to a Facility	Pre 53
	Injury Due to Failure to Prepare an EIS	Pre 60
2.10.4.1.1.2	"Zone of Interests" Test	Pre 61
2.10.4.1.2	Standing of Organizations to Intervene	Pre 64
2.10.4.1.2.1	Organizational Standing	Pre 66
2.10.4.1.2.2	Representational Standing	Pre 68

JANUARY 2005 TABLE OF CONTENTS

2.10.4.1.2.2.A	The Person an Organization Seeks to Represent Must Be	
	a "Member" and Must Have Given "Authorization"	Pre 70
2.10.4.1.2.2.B	Timing of Membership	Pre 71
2.10.4.1.2.3	Governments/Indian Tribes and Organizational Standing	Pre 72
2.10.4.1.3	Standing to Intervene in Export Licensing Cases	Pre 73
2.10.4.1.4	Standing to Intervene in License Transfer Proceedings	Pre 75
2.10.4.2	Discretionary Intervention	Pre 75
2.10.5	Contentions of Intervenors	Pre 78
2.10.5.1	Scope of Contentions	Pre 79
2.10.5.2	Pleading Requirements for Contentions	Pre 80
2.10.5.2.1	Bases for Contentions	Pre 83
2.10.5.2.2	Specificity of Contentions	Pre 88
2.10.5.3	Response to Contentions	Pre 91
2.10.5.4	Material Used in Support of Contentions	Pre 91
2.10.5.5	Timeliness of Submission of Contentions	Pre 93
2.10.5.5.1	Factor #1–Good Cause for Late Filing	Pre 96
2.10.5.5.2	Factor #2-	Pre 101
2.10.5.5.3	Factor #3-	Pre 101
2.10.5.5.4	Factor #4	Pre 101
2.10.5.5.5	Factor #5–Other Means Available to Protect the Petitioner's	
2.10.0.0.0	Interest	Pre 101
2.10.5.5.6	Factor #6–Extent Petitioner's Interests are Represented By	
2.10.0.0.0	Other Parties	Pre 103
2.10.5.5.7	Factor #7–Extent Participation Will Broaden Issues or Delay	110100
2.10.0.0.7	the Proceeding	Pre 103
2.10.5.5.8	Factor #8–Ability of Petitioner to Assist in Developing Record	Pre 104
2.10.5.6	Contentions Challenging Regulations	Pre 106
2.10.5.7	Contentions Involving Generic Issues/Subject of Rulemaking	Pre 108
2.10.5.8	Contentions Challenging Absent or Incomplete Documents	Pre 109
2.10.5.9	Contentions re Adequacy of Security Plan	Pre 111
2.10.5.10	Defective Contentions	Pre 113
2.10.5.10	Discovery to Frame Contentions	Pre 114
2.10.5.11	Stipulations on Contentions (Reserved)	Pre 114
2.10.6	Conditions on Grants of Intervention	Pre 115
2.10.7	Reinstatement of Intervenor After Withdrawal	Pre 115
2.10.7	Rights of Intervenors at Hearing	Pre 115
2.10.8.1	Burden of Proof	Pre 116
2.10.8.2	Presentation of Evidence	Pre 117
2.10.8.2.1		Pre 117
2.10.8.2.1	Affirmative Presentation by Intervenor/Participants Consolidation of Intervenor Presentations	Pre 117
2.10.8.3		Pre 117
	Cross-Examination by Intervenors	
2.10.8.4	Intervenor's Right to File Proposed Findings	Pre 118
2.10.8.5	Attendance at/Participation in Prehearing Conferences/Hearings	Pre 119
2.10.8.6	Pleadings and Documents of Intervenors	Pre 120
2.10.9	Cost of Intervention	Pre 120
2.10.9.1	Financial Assistance to Intervenors	Pre 120
2.10.9.2	Intervenors' Witnesses	Pre 121
2.10.10	Appeals by Intervenors	Pre 121
2.10.11	Intervention in Remanded Proceedings	Pre 121

2.11	Nonparty Participation - Limited Appearance and	
	Interested States	Pre 122
2.11.1	Limited Appearances in NRC Adjudicatory Proceedings	Pre 122
2.11.1.1	Requirements for Limited Appearance	Pre 122
2.11.1.2	Scope/Limitations of Limited Appearances	Pre 122
2.11.2	Participation by Nonparty Interested States and Local Governments	Pre 122
2.12	Discovery	Pre 126
2.12.1	Time for Discovery	Pre 126
2.12.2	Discovery Rules	Pre 128
2.12.2.1	Construction of Discovery Rules	Pre 129
2.12.2.2	Scope of Discovery	Pre 130
2.12.2.3	Requests for Discovery During Hearing	Pre 132
2.12.2.4	Privileged Matter	Pre 132
2.12.2.4.1	Attorney-Client Privilege	Pre 134
2.12.2.4.2	Identity of Confidential Informants	Pre 137
2.12.2.4.3	FOIA Exemptions–Executive/Deliberative Process Privilege	Pre 139
2.12.2.4.4	Waiver of a Privilege	Pre 142
2.12.2.5	Protective Orders	Pre 142
2.12.2.6	Work Product	Pre 143
2.12.2.7	Updating Discovery Responses	Pre 144
2.12.2.8	Interrogatories	Pre 145
2.12.3	Discovery Against the Staff	Pre 145
2.12.4	Responses to Discovery Requests	Pre 147
2.12.5	Compelling Discovery/Subpoenas	Pre 149
2.12.5.1	Compelling Discovery From ACRS and ACRS Consultants	Pre 151
2.12.5.2	Sanctions for Failure to Comply with Discovery Orders	Pre 152
2.12.6	Appeals of Discovery Rulings	Pre 154
2.12.7	Discovery in High-Level Waste Licensing Proceedings	Pre 155
2.12.7.1	Pre-License Application Licensing Board	Pre 155
2.12.7.2	Licensing Support System	Pre 155
3.0	HEARINGS	H 1
3.1	Licensing Board	H 1
3.1.1	General Role/Power of Licensing Board	H 1
3.1.1.1	Role and Authority of the Chief Judge	H 3
3.1.2	Scope of Jurisdiction of Licensing Board	H 3
3.1.2.1	Jurisdiction Grant from the Commission	H 3
3.1.2.1.1	Effect of Commission Decisions/Precedent	H 6
3.1.2.2	Authority in Construction Permit Proceedings Distinguished	
	From Authority in Operating License Proceedings	H 7
3.1.2.2.A	Scope of Authority in Construction Permit Proceedings	H 7
3.1.2.2.B	Scope of Authority in Operating License Proceedings	H 8
3.1.2.3	Scope of Authority in License Amendment Proceedings	H 11
3.1.2.4	Scope of Authority to Rule on Petitions and Motions	H 11
3.1.2.5	Scope of Authority to Reopen the Record	H 13
3.1.2.6	Scope of Authority to Rule on Contentions	H 14
3.1.2.7	Authority of Licensing Board to Raise Sua Sponte Issues	H 15

3.1.2.8	Expedited Proceedings; Timing of Rulings	H 18
3.1.2.9	Licensing Board's Relationship with the NRC Staff	H 20
3.1.2.10	Licensing Board's Relationship with States and Other Agencies (Including CEQ)	H 23
3.1.2.11	Conduct of Hearing by Licensing Board	H 25
3.1.2.11.1	Powers/Role of Presiding Officer	H 28
3.1.3	Quorum Requirements for Licensing Board Hearing	H 29
3.1.4	Disqualification of a Licensing Board Member	H 29
3.1.4.1	Motion to Disqualify Adjudicatory Board Member	H 29
3.1.4.2	Grounds for Disqualification of Adjudicatory Board Member	H 31
3.1.4.3	Improperly Influencing an Adjudicatory Board Decision	H 34
3.1.5	Resignation of a Licensing Board Member	H 34
3.2	Export Licensing Hearings	H 34
3.2.1	Scope of Export Licensing Hearings	H 34
3.2.2	Standing to Intervene in Export License Hearings	H 35
3.2.3	Hearing Requests	H 35
3.3	Hearing Scheduling Matters	H 35
3.3.1	Scheduling of Hearings	H 35
3.3.1.1	Public Interest Requirements re Hearing Schedule	H 37
3.3.1.2	Convenience of Litigants re Hearing Schedule	H 37
3.3.1.3	Adjourned Hearings (Reserved)	H 37
3.3.2	Postponement of Hearings	H 38
3.3.2.1	Factors Considered in Hearing Postponement	H 38
3.3.2.2 3.3.2.3	Effect of Plant Deferral on Hearing Postponement Sudden Absence of ASLB Member at Hearing	H 39 H 39
3.3.2.4	Time Extensions for Case Preparation Before Hearing	H 40
3.3.3	Scheduling Disagreements Among Parties	H 40
3.3.4	Appeals of Hearing Date Rulings	H 41
3.3.5	Location of Hearing (Reserved)	H 41
3.3.5.1	Public Interest Requirements re Hearing Location (Reserved)	H 41
3.3.5.2	Convenience of Litigants Affecting Hearing Location	H 41
3.3.6	Consolidation of Hearings and of Parties	H 42
3.3.7	In Camera Hearings	H 43
3.4	Issues for Hearing	H 43
3.4.1	Intervenor's Contentions - Admissibility at Hearing	H 47
3.4.2	Issues Not Raised by Parties (Also see 3.1.2.7)	H 48
3.4.3	Issues Not Addressed by a Party	H 49
3.4.4	Separate Hearings on Special Issues	H 50
3.4.5	Construction Permit Extension Proceedings	H 50
3.4.5.1	Scope of Construction Permit Extension Proceedings	H 51
3.4.5.2	Contentions in Construction Permit Extension Proceedings	H 53
3.4.6	Result of Withdrawal of a Party	H 54
0.5	O Diana sidan	
3.5	Summary Disposition (Also see Section 5.8.4)	H 54

JANUARY 2005

3.5.1	Applicability of Federal Rules Governing Summary Judgment	H 54
3.5.2	Standard for Granting/Denying a Motion for Summary Disposition	H 55
3.5.3	Burden of Proof With Regard to Summary Disposition Motions	H 57
3.5.4	Contents of Motions for/Responses to Summary Disposition	H 61
3.5.5	Time for Filing Motions for Summary Disposition	H 64
3.5.6	Time for Filing Responses to Summary Disposition Motions	H 65
3.5.7	Role/Power of Licensing Board in Ruling on Summary	1100
3.3.7	Disposition Motions	H 65
2571		
3.5.7.1	Operating License Hearings	H 67
3.5.7.2	Construction Permit Hearings	H 67
3.5.7.3	Amendments to Existing Licenses	H 67
3.5.8	Summary Disposition: Mootness	H 68
3.5.9	Content of Summary Disposition Orders	H 68
3.5.10	Appeals from Rulings on Summary Disposition	H 68
3.6	Other Dispositive Motions/Failure to State a Claim	H 69
3.7	Attendance at and Participation in Hearings	H 69
3.8	Burden and Means of Proof	H 70
3.8.1	Duties of Applicant/Licensee	H 72
3.8.2	Intervenor's Contentions - Burden and Means of Proof	H 73
3.8.3	Specific Issues - Means of Proof	H 74
3.8.3.1	Exclusion Area Controls	H 74
3.8.3.2	Need for Facility	H 74
3.8.3.3	Burden and Means of Proof in Interim Licensing Suspension	
	Cases	H 76
3.8.3.4	Availability of Uranium Supply	H 76
3.8.3.5	Environmental Costs (Reserved)	H 76
3.8.3.5.1	Cost of Withdrawing Farmland from Production	H 76
0.0.0.0.1	(Also see Section 6.16.6.1.1)	1170
3.8.3.6	Alternate Sites Under NEPA	H 77
3.8.3.7	Management Capability	H 77
3.0.3.1	мападеттетт Саравшту	1177
3.9	Burden of Persuasion (Degree of Proof)	H 78
3.9.1	Environmental Effects Under NEPA	H 79
3.10	<u>Stipulations</u>	H 79
3.11	Official Notice of Facts	H 79
3.12	Evidence	H 81
3.12.1	Rules of Evidence	H 82
3.12.1.1	Admissibility of Evidence	H 82
3.12.1.1.1	Admissibility of Hearsay Evidence	H 83
3.12.1.2	Hypothetical Questions	H 84
3.12.1.3	Reliance On Scientific Treatises, Newspapers, Periodicals	H 84
3.12.1.4	Off-the-Record Comments	H 84
3.12.1.5	Presumptions and Inferences	H 85
	recommendation of the second o	

3.12.1.6	Government Documents	H 85
3.12.2	Status of ACRS Letters	H 85
3.12.3 3.12.4	Presentation of Evidence by Intervenors Evidentiary Objections	H 86 H 86
3.12.4	Statutory Construction; Weight	H 86
3.12.5.1	Due Process	H 87
3.12.5.2	Bias or Prejudgment, Disqualification	H 88
3.13	Witnesses at Hearing	H 88
3.13.1	Compelling Appearance of Witness	H 88
3.13.1.1	NRC Staff as Witnesses	H 89
3.13.1.2 3.13.2	ACRS Members as Witnesses	H 89
3.13.2	Sequestration of Witnesses Board Witnesses	H 90 H 90
3.13.4	Expert Witnesses	H 91
3.13.4.1	Fees for Expert Witnesses	H 93
3.14	Cross-Examination	H 93
3.14.1	Cross-Examination by Intervenors	H 94
3.14.2	Cross-Examination by Experts	H 96
3.14.3	Inability to Cross-Examine as Grounds to Reopen H 96	
3.15	Record of Hearing	H 97
3.15.1	Supplementing Hearing Record by Affidavits	H 97
3.15.2	Reopening Hearing Record	H 97
3.15.3	Material Not Contained in Hearing Record	H 99
3.16	Interlocutory Review via Directed Certification	H 99
3.17	Licensing Board Findings	H 99
3.17.1	Independent Calculations by Licensing Board	H 102
3.18	Res Judicata and Collateral Estoppel	H 102
3.19	Termination of Proceedings	H 109
3.19.1	Procedures for Termination	H 109
3.19.2	Post-Termination Authority of Commission	H 110
3.19.3	Dismissal	H 110
4.0	POST HEARING MATTERS	PH 1
4.1	Settlements and Stipulations	PH 1
4.2	Proposed Findings	PH 4
4.2 4.2.1	Intervenor's Right to File Proposed Findings	PH 5
4.2.2	Failure to File Proposed Findings	PH 5
	. •	

4.3	Initial Decisions	PH 6
4.3.1	Reconsideration of Initial Decision	PH 9
4.4	Reopening Hearings	PH 9
4.4.1	Motions to Reopen Hearing	PH 12
4.4.1.1	Time for Filing Motion to Reopen Hearing	PH 15
4.4.1.2	Contents of Motion to Reopen Hearing (Reserved)	PH 17
4.4.2	Grounds for Reopening Hearing	PH 17
4.4.3	Reopening Construction Permit Hearings to Address New Generic Issues	PH 22
4.4.4		F11 22
4.4.4	Discovery to Obtain Information to Support Reopening of Hearing is Not Permitted	PH 22
4.5	Motions to Reconsider	PH 23
4.6	Procedure on Remand	PH 26
4.6.1	Jurisdiction of the Licensing Board on Remand	PH 26
4.6.2	Jurisdiction of the Board on Remand	PH 26
4.6.3	Stays Pending Remand to Licensing Board	PH 27
4.6.4	Participation of Parties in Remand Proceedings	PH 27
5.0	APPEALS	App 1
5.1	Commission Review	App 1
5.1.1	Commission Review Pursuant to 2.341(b) (formerly 2.786(b))	App 1
5.1.2	Sua Sponte Review	App 2
5.1.3	Effect of Commission's Denial of Petition for Review	App 3
5.1.4	Commission Review Pursuant to 2.311 (formerly 2.714a)	App 3
5.1.5	Effect of Affirmance as Precedent	App 6
5.1.6	Precedential Effect of Unpublished Opinions	App 6
5.1.7	Precedential Weight Accorded Previous Appeal Board Decisions	Ann 6
	Appeal Board Decisions	App 6
5.2	Who Can Appeal	App 6
5.2.1	Participating by filing an Amicus Curiae Brief	App 8
5.2.2	Aggrieved Parties Can Appeal	App 9
5.2.3	Parties' Opportunity to be Heard on Appeal	App 11
5.3	How to Petition for Review	App 11
5.4	Time for Seeking Review	App 12
5.4.1	Variation in Time Limits of Appeals	App 15
5.5	Scope of Commission Review	App 16
5.5.1	Issues Raised for the First Time on Appeal or in a Petition	
	for Review	App 17
5.5.2	Effect on Appeal of Failure to File Proposed Findings	App 19
5.5.3	Matters Considered on Appeal of Ruling Allowing Late	

5.5.4	Intervention Consolidation of Appeals on Congris Issues	App 19 App 19
5.5.4	Consolidation of Appeals on Generic Issues	App 19
5.6	Standards for Reversing Licensing Board on Findings of	Ann 10
5.6.1	<u>Fact and Other Matters</u> Standards for Reversal of Ruling on Intervention	App 19 App 22
5.0.1	Standards for Reversar or Ruling of Intervention	App 22
5.7	<u>Stays</u>	App 24
5.7.1	Requirements for a Stay Pending Review	App 26
5.7.1.1	Stays of Initial Decisions	App 26
5.7.1.2 5.7.1.3	Stays of Board Proceedings, Interlocutory Rulings & Staff Action 10 C.F.R. § 2.342 (formerly § 2.788) & Virginia Petroleum	App 27
	Jobbers Criteria	App 29
5.7.1.3.1	Irreparable Injury	App 31
5.7.1.3.2	Possibility of Success on Merits	App 35
5.7.1.3.3	Harm to Other Parties and Where the Public Interest Lies	App 35
5.7.2	Stays Pending Remand to Licensing Board	App 36
5.7.3	Stays Pending Judicial Review	App 37
5.7.4	Stays Pending Remand After Judicial Review	App 37
5.7.5	Immediate Effectiveness Review of Operating License Decisions	App 37
5.8	Review as to Specific Matters	App 39
5.8.1	Scheduling Orders	App 39
5.8.2	Discovery Rulings	App 40
5.8.2.1	Rulings on Discovery Against Nonparties	App 40
5.8.2.2	Rulings Curtailing Discovery	App 40
5.8.3	Refusal to Compel Joinder of Parties	App 40
5.8.3.1	Order Consolidating Parties	App 40
5.8.4	Order Denying Summary Disposition (Also see Section 3.5)	App 41
5.8.5	Procedural Irregularities	App 41
5.8.6	Matters of Recurring Importance	App 41
5.8.7	Advisory Decisions on Trial Rulings	App 41
5.8.8	Order on Pre-LWA Activities	App 41
5.8.9	Partial Initial Decisions	App 42
5.8.10	Other Licensing Actions	App 42
5.8.11	Evidentiary Rulings	App 42
5.8.12	Authorization of Construction Permit	App 43
5.8.13	Certification of Gaseous Diffusion Plants	App 43
5.9	Perfecting Appeals	App 44
5.9.1	General Requirements for Petition for Review	
	of an Initial Decision	App 44
5.10	Briefs on Appeal	App 44
5.10.1	Importance of Brief	App 44
5.10.2	Time for Submittal of Brief	App 45
5.10.2.1	Time Extensions for Brief	App 46
5.10.2.2	Supplementary or Reply Briefs	App 46

JANUARY 2005

5.10.3 5.10.3.1 5.10.3.2	Contents of Brief Opposing Briefs Amicus Curiae Briefs	App 47 App 51 App 51
5.11	Oral Argument	App 51
5.11.1	Failure to Appear for Oral Argument	App 52
5.11.2 5.11.3	Grounds for Postponement of Oral Argument Oral Argument by Nonparties	App 52 App 52
5.12	Interlocutory Review	App 52
5.12.1 5.12.2	Interlocutory Review Disfavored Criteria for Interlocutory Review	App 52
5.12.2.1	Irreparable Harm	App 55 App 58
5.12.2.1	Pervasive and Unusual Effect on the Proceeding	App 36 App 60
5.12.2.2	Responses Opposing Interlocutory Review	App 60 App 62
5.12.4	Certification of Questions for Interlocutory Review and Referred	7 tpp 02
	Rulings	App 63
5.12.4.1	Effect of Subsequent Developments on Motion to Certify	App 65
5.12.4.2	Effect of Directed Certification on Uncertified Issues	App 65
5.13	Disqualification of a Commissioner	App 65
5.14	Reconsideration by the Commission (Also see Section 4.5)	App 66
5.15	Jurisdiction of NRC to Consider Matters While	
	Judicial Review is Pending	App 68
5.16	Procedure On Remand	App 69
	(Also see Section 4.6)	
5.17	Mootness and Vacatur	App 69
6.0	GENERAL MATTERS	GM 1
6.1	Amendments to Existing Licenses and/or Construction	
	<u>Permits</u>	GM 1
6.1.1	Staff Review of Proposed Amendments (Reserved)	GM 1
6.1.2	Amendments to Research Reactor Licenses (Reserved)	GM 2
6.1.3	Matters to be Considered in License Amendment Proceedings	GM 2
6.1.3.1	Specific Matters Considered in License Amendment	
	Proceedings	GM 2
6.1.4	Hearing Requirements for License/Permit Amendments	GM 3
6.1.4.1	Notice of Hearing on License/Permit Amendments (Reserved)	GM 5 GM 5
6.1.4.2 6.1.4.3	Intervention on License/Permit Amendments Summary Disposition Procedures on License/Permit	GIVI 5
U. 1. 4 .3	Amendments	GM 6
6.1.4.4	Matters Considered in Hearings on License	

JANUARY 2005 TABLE OF CONTENTS

0.4.5	Amendments	GM 6
6.1.5	Primary Jurisdiction to Consider License Amendment in Special Hearing	GM 8
6.1.6	Facility Changes Without License Amendments	GM 8
6.2	Amendments to Construction Permit Applications	GM 9
6.3	Antitrust Considerations	GM 9
6.3.A	Application of Antitrust Laws; Market Power	GM 12
6.3.B	Application of Antitrust Laws; Remedial Authority	GM 13
6.3.1	Consideration of Antitrust Matters After the	014.4
0044	Construction Permit Stage	GM 14
6.3.1.1	Limitations on Antitrust Review After Issuance	ON 45
	of Operating License	GM 15
6.3.2 6.3.3	Intervention in Antitrust Proceedings	GM 17 GM 18
6.3.3.1	Discovery in Antitrust Proceedings	
0.3.3.1	Discovery Cutoff Dates for Antitrust Proceedings	GM 18
6.4	Attorney Conduct	GM 19
6.4.1	Practice Before Commission	GM 19
6.4.2	Disciplinary Matters re Attorneys	GM 21
6.4.2.1	Jurisdiction of Special Board re Attorney Discipline	GM 22
6.4.2.2	Procedures in Special Disqualification	
	Hearings re: Attorney Conduct	GM 22
6.4.2.3	Conflict of Interest	GM 22
6.5	Communications Between Staff/Applicant/Other Parties/	
	Adjudicatory Bodies	GM 23
6.5.1	Ex Parte Communications Rule	GM 23
6.5.2	"Separation of Functions" Rules	GM 25
6.5.3	Telephone Conference Calls	GM 25
6.5.4	Staff-Applicant Communications	GM 25
6.5.4.1	Staff Review of Application	GM 25
6.5.4.2	Staff-Applicant Correspondence	GM 26
6.5.5	Notice of Relevant Significant Developments	GM 26
6.5.5.1	Duty to Inform Adjudicatory Board of Significant	014.00
	Developments	GM 26
6.6	Decommissioning	GM 29
6.6.1	Decommissioning Plan	GM 30
6.6.1.1	Decommissioning Funding	GM 30
6.7	Early Site Review Procedures	GM 33
6.7.1	Scope of Early Site Review	GM 33
		3 00
6.8	Endangered Species Act	GM 33
6.8.1	Required Findings re Endangered Species Act	GM 33
6.8.2	Degree of Proof Needed re Endangered Species Act	GM 34

TABLE OF CONTENTS JANUARY 2005

6.9	Financial Qualifications	GM 34
6.10 6.10.1	Generic Issues Consideration of Generic Issues in Licensing	GM 39
6.10.2	Proceedings Effect of Unresolved Generic Issues	GM 39 GM 41
6.10.2.1	Effect of Unresolved Generic Issues in Construction Permit Proceedings	GM 41
6.10.2.2	Effect of Unresolved Generic Issues in Operating License Proceedings	GM 41
6.11	Power Reactor License Renewal Proceeding	GM 42
6.12	Masters in NRC Proceedings	GM 44
6.13	[RESERVED]	GM 45
6.14	Materials Licenses	GM 45
6.14.1	Written Presentations in Materials Proceedings	GM 47
6.14.2	Stays of Material Licensing Proceedings	GM 48
6.14.3	Scope of Materials Proceedings/Authority of Presiding Officer	GM 49
6.14.4	Amendments to Material Licenses	GM 50
6.14.5	Materials License - Renewal	GM 50
6.14.6	Termination of Material License	GM 51
6.15	Motions in NRC Proceedings	GM 51
6.15.1	Form of Motion	GM 52
6.15.2	Responses to Motions	GM 52
6.15.2.1	Time for Filing Responses to Motions	GM 52
6.15.3	Licensing Board Actions on Motions	GM 52
6.16	NEPA Considerations	GM 53
6.16.1	Environmental Impact Statements (EIS)	GM 57
6.16.1.1	Need to Prepare an EIS	GM 58
6.16.1.2	Scope of EIS	GM 63
6.16.2	Role of EIS	GM 66
6.16.3	Circumstances Requiring Redrafting of Final	
	Environmental Statement (FES)	GM 66
6.16.3.1	Effect of Failure to Comment on Draft Environmental	
	Statement (DES)	GM 69
6.16.3.2	Stays Pending Remand for Inadequate EIS	GM 69
6.16.4	Alternatives	GM 69
6.16.4.1	Obviously Superior Standard for Site Selection	GM 72
6.16.4.2	Standards for Conducting Cost-Benefit Analysis	
	Related to Alternatives	GM 73
6.16.5	Need for Facility	GM 74
6.16.6	Cost-Benefit Analysis Under NEPA	GM 75
6.16.6.1	Consideration of Specific Costs Under NEPA	GM 77
6.16.6.1.1	Cost of Withdrawing Farmland from Production	GM 77

	(Also see Section 3.8.3.5.1)	
6.16.6.1.2	Socioeconomic Costs as Affected by Increased	
	Employment and Taxes from Proposed Facility	GM 77
6.16.7	Consideration of Class 9 Accidents/"Remote and Speculative"	
	Accidents in an Environmental Impact Statement	GM 78
6.16.8	Power of NRC Under NEPA	GM 80
6.16.8.1	Powers in General	GM 81
6.16.8.2	Transmission Line Routing	GM 82
6.16.8.3	Pre-LWA Activities/Offsite Activities	GM 82
6.16.8.4	Relationship to EPA with Regard to Cooling Systems	GM 83
6.16.8.5	NRC Power Under NEPA re the Federal Water Pollution	
	Control Act	GM 83
6.16.8.6	Environmental Justice	GM 84
6.16.9	Spent Fuel Pool Proceedings	GM 85
6.16.10	Certificate of Compliance/Gaseous Diffusion Plant	GM 86
6.17	NRC Staff	GM 86
6.17.1	Staff Role in Licensing Proceedings	GM 86
6.17.1.1	Staff Demands on Applicant or Licensee	GM 90
6.17.1.2	Staff Witnesses	GM 91
6.17.1.3	Post Hearing Resolution of Outstanding Matters by the Staff	GM 92
6.17.2	Status of Staff Regulatory Guides (Also see Section 6.21.3)	GM 94
6.17.3	Status of Staff Position and Working Papers	GM 94
6.17.4	Status of Standard Review Plan	GM 95
6.17.5	Conduct of NRC Employees (Reserved)	GM 95
6.18	Orders of Licensing Boards and Presiding Officers	GM 95
6.18.1	Compliance with Board Orders	GM 95
6.19	Precedent and Adherence to Past Agency Practice	GM 96
6.20	Pre-Permit Activities	GM 96
6.20.1	Pre-LWA Activity	GM 98
6.20.2	Limited Work Authorization	GM 99
6.20.2.1	LWA Status Pending Remand Proceedings	GM 100
6.21	Regulations	GM 100
6.21.1	Compliance with Regulations	GM 100
6.21.2	Commission Policy Statements	GM 100
6.21.3	Regulatory Guides and Other Guidance Documents	GM 101
6.21.4	Challenges to Regulations	GM 104
6.21.5	Agency's Interpretation of its Own Regulations	GM 107
6.21.6	General Design Criteria	GM 108
6 21 7	Reporting Requirements	GM 110

TABLE OF CONTENTS JANUARY 2005

6.22	Rulemaking	GM 110
6.22.1	Rulemaking Distinguished from General Policy	
C 00 0	Statements Constitution and Bulamaking	GM 111
6.22.2	Generic Issues and Rulemaking	GM 111
6.23	Research Reactors	GM 111
6.24	Disclosure of Information to the Public	GM 112
6.24.1	Freedom of Information Act Disclosure	GM 113
6.24.2	Privacy Act Disclosure (Reserved)	GM 115
6.24.3	Disclosure of Proprietary Information	GM 115
6.24.3.1	Protecting Information Where Disclosure is Sought in	
	an Adjudicatory Proceeding	GM 116
6.24.3.2	Security Plan Information Under 10 CFR § 2.390(d)	GM 118
6.25	Enforcement Proceedings	GM 119
6.25.1	NRC Enforcement Authority	GM 119
6.25.2	Enforcement Procedures	GM 120
6.25.2.1	Due Process	GM 121
6.25.2.2	Intervention	GM 122
6.25.3	Petitions for Enforcement Action Under 10 CFR 2.206	GM 123
6.25.3.1	Commission Review of Director's Decisions Under 10 CFR 2.206	GM 126
6.25.4	Grounds for Enforcement Orders	GM 128
6.25.5	Immediately Effective Orders	GM 130
6.25.5.1	Review of Immediate Effectiveness of Enforcement Order	GM 132
6.25.6	Issues in Enforcement Proceedings	GM 135
6.25.7	Burden of Proof	GM 136
6.25.8	Licensing Board Review of Proposed Sanctions	GM 137
6.25.9	Stay of Enforcement Proceedings	GM 138
6.25.10	Civil Penalty Proceedings	GM 139
6.25.11	Settlement of Enforcement Proceedings	GM 141
6.25.12	Inspections and Investigations	GM 141
6.25.13	False Statements	GM 142
6.25.14	Independence of Inspector General	GM 142
6.26	Stay of Agency Licensing Action - Informal Hearings	GM 143
6.27	[Reserved]	GM 144
6.28	Technical Specifications	GM 144
6.29	Termination of Facility Licenses	GM 145
6.30	Procedures in Other Types of Hearings	GM 146
6.30.1	Military or Foreign Affairs Functions	GM 146
6.30.2	Export Licensing	GM 146
0.00.2	(Also see Section 3.4.6)	CIVI 140
6.30.2.1	Jurisdiction of Commission re Export Licensing	GM 147
6.30.2.2	Export License Criteria	GM 148
		

6.30.2.3	HEU Export License–Atomic Energy Act	GM 148
6.30.3	High-Level Repository Waste Licensing	GM 148
6.30.4	Low-Level Waste Disposal	GM 149
6.30.5	[Reserved]	GM 149
6.30.6	Certification of Gaseous Diffusion Plants	GM 149
6.30.7	Senior Operator License Proceedings	GM 150
6.30.8	Subpart K Proceedings	GM 151
6.31	Transfers of Licenses (Directly and Indirectly)	GM 151
6.31.1	Subpart M Proceedings	GM 152
6.31.2	Standing in License Transfer Proceedings	GM 154
6.31.3	Scope of License Transfer Proceedings	GM 155
6.31.3.1	Consideration of Financial Qualifications	GM 158
6.31.3.2	Antitrust Considerations	GM 160
6.31.3.3	Need for EIS Preparation	GM 161
6.31.3.4	Concurrent Proceedings	GM 161
6.31.3.5	Decommissioning	GM 161
6.31.4	Motions for Stay/Suspension of Proceedings	GM 163
6.32	Television and Still Camera Coverage of NRC Proceedings	GM 164
6.33	National Historic Preservation Act Requirements	GM 165
6.34	Cultural Resources Plan	GM 165
6.35	Native American Graves Protection and Repatriation	
	Act Requirements	GM 165
6.36	Hybrid Procedures Under Subpart K	GM 166
	(Also see Section 6.16.9)	

CFR INDEX

STATUTE INDEX

KEYWORD INDEX

TABLE OF CONTENTS JANUARY 2005