

UNITED STATES NUCLEAR REGULATORY COMMISSION

STAFF PRACTICE AND PROCEDURE DIGEST

(The January 2005 Update covers Commission, Appeal Board, and Licensing Board Decisions issued from July 1, 1972 through January 31, 2004)

NOTE TO USERS

This is the thirteenth edition of the NRC Staff Practice and Procedure Digest. It contains a digest of significant decisions of the Commission, the Atomic Safety and Licensing Appeal Board Panel, and the Atomic Safety and Licensing Board Panel issued during the period from July 1, 1972 to January 31, 2004, which interpret the NRC's Rules of Practice in 10 CFR Part 2. Although the Appeal Board Panel was abolished in 1991, Appeal Board precedent may still be cited, to the extent it is consistent with more recent case law and the current rules of practice. This edition of the Digest replaces the earlier editions and revisions and includes appropriate changes reflecting the amendments to the Rules of Practice effective through January 2005.

Since publication of the last edition of the digest, the Commission has adopted a comprehensive revision to its rules of practice. See *Changes to Adjudicatory Process*, 69 Fed. Reg. 2182 (Jan. 14, 2004), *corrections issued* 69 Fed. Reg. 25997 (May 11, 2004). Petitions for review challenging the new rules were denied in *Citizens Awareness, Inc. v. United States*, 391 F.3d 338 (1st Cir. 2004). Although our staff has labored long and hard to conform the digest to the new rules of practice, practitioners are cautioned to ensure that precedent cited in the digest is consistent with the new rules. The NRC has created several tools to aid practitioners in understanding and applying the revised Part 2. These user tools can be found at the NRC Web site at <http://www.nrc.gov/what-we-do/regulatory/adjudicatory/part2revisions.html>. These tools are provided for informational purposes only and are not a replacement for the regulations in 10 CFR Part 2.

The digest includes the text of several Commission policy statements bearing directly on adjudicatory practice. Of particular importance is the Commission's Policy on Conduct of Adjudicatory Proceedings, CLI-98-12 (July 28, 1998), which sets out instructions and expectations for the conduct of adjudicatory proceedings. Although the policy statement remains important as an expression of Commission policy on the conduct of adjudicatory proceedings, practitioners should be sure to follow the specific provisions of the rules of practice which have been adopted since issuance of the policy statement.

The Digest is roughly structured in accordance with the chronological sequence of the nuclear facility licensing process as set forth in 10 CFR Part 2. Those decisions which did not fit easily into that structure are dealt with in a section on "general matters." Where appropriate, particular decisions are indexed under more than one heading. Some topical headings contain no decision citations or discussion. It is anticipated that future updates to the Digest will utilize these headings.

Persons using this Digest are placed on notice that it may not be used as an authoritative citation in support of any position before the Commission or any of its adjudicatory tribunals. Persons using this Digest are also placed on notice that it is intended for use only as an initial research tool; that it may, and likely does, contain errors; and that the user should not rely on the Digest analyses and interpretations, but must read, analyze and rely on the user's own analysis of the cited Commission, Appeal Board and Licensing Board decisions. Neither the United States Nuclear Regulatory Commission, nor any of its employees, makes any expressed or implied warranty or assumes liability or responsibility for the accuracy, completeness or usefulness of any material presented in the Digest.

This current edition of the Digest was prepared by the staff of the Office of General Counsel. We would acknowledge particularly the contributions to this effort of OGC attorneys Kathryn Barber Nolan and Brooke Smith, who guided this comprehensive revision of the digest. They were ably assisted by other attorneys on our staff, including Molly Bupp, Melissa Duffy, Marisa Higgins, Tyson Smith, Harry Wedewer, Michael Woods, and Laura Zaccari, and our student law clerks, Stefanie Magner and Joe Adams. Theresa Mayberry prepared the manuscript for publication. We hope that the Digest will prove to be as useful to the members of the public as it has been to the members of the Office of the General Counsel.

We encourage the users of the Digest to provide us any comments or suggestions that would improve its usefulness. You may send comments, suggestions or corrections to my attention.

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