

UNITED STATES NUCLEAR REGULATORY COMMISSION

STAFF PRACTICE AND PROCEDURE DIGEST

(The January 2009 Update covers Commission, Appeal Board, and Licensing Board Decisions issued from July 1, 1972 through December 2006)

NOTE TO USERS

This is the fourteenth 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 December 2006), 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 December 2006.

Users of the Digest should recall that the Commission adopted a comprehensive revision to its rules of practice in 2004. *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 worked diligently to conform the digest to the revised rules of practice, practitioners should 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/about-nrc/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.

Practitioners should also be mindful of the adoption of two additional rulemakings that affect the Rules of Practice:

Use of Electronic Submissions in Agency Hearings: On August 28, 2007 (72 FR 49139), the NRC published an amendment, effective October 15, 2007, to require the use of electronic submissions in all agency hearings, consistent with the existing practice for the high-level radioactive waste repository application (which is covered under a separate set of regulations). The amendments require the electronic transmission of electronic documents in submissions made to the NRC's adjudicatory boards. Although exceptions to these requirements are established to allow paper filings in limited circumstances, the NRC maintains a strong preference for fully electronic filing and service. The final rule builds upon prior NRC rules and developments in the Federal courts regarding the use of electronic submissions.

Licenses, Certification and Approvals for Nuclear Power Plants: On August 28, 2007 (72 FR 49351), the NRC published an amendment to its regulations, effective September 27, 2007, to revise the provisions applicable to the licensing and approval processes for nuclear power plants (i.e., early site permit, standard design approval, standard design certification, combined license, and manufacturing license). These amendments clarify the applicability of various requirements to each of the licensing processes by making necessary conforming amendments throughout the NRC's regulations, including Part 2, to enhance the NRC's regulatory effectiveness and efficiency in implementing its licensing and approval processes.

The digest includes the text of several Commission policy statements bearing directly on adjudicatory practice. We have included the text of the Commission's 2008 Statement of Policy on Conduct of New Reactor Licensing Proceedings, CLI-08-07, 73 Fed. Reg. 20963 (April 17, 2008). Although this and other policy statements are important expressions of Commission policy on the conduct of adjudicatory proceedings, practitioners should be sure to follow the specific provisions of the rules of practice in 10 CFR Part 2.

This digest also includes as an Appendix a list of NRC adjudicatory decisions appealed to the courts in order to assist practitioners in tracking the case history for final NRC decisions. I appreciate the contribution of Roland Frye of the Office of Commission Appellate Adjudication who compiled the list.

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 and subject matter 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 positions 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's 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 the General Counsel. I want to acknowledge particularly the contribution to this effort of OGC attorney Margaret Bupp, who guided this comprehensive revision of the digest. She was ably assisted by other attorneys on our staff, including James Adler, Jerry Bonanno, Michael Spencer, Steve Hamrick, Patrick Moulding, Jason Zorn and Carol Lazar. Theresa Mayberry, Joe Gilman and Brian Newell 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 hope to publish an update to the Digest within the next year. Users of the Digest are encouraged to provide us any comments or suggestions that would improve its usefulness. You may send comments, suggestions or corrections to my attention.

Stephen G. Burns
Deputy General Counsel
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555
e-mail: stephen.burns@nrc.gov

March 2009