

Rules and Regulations

Federal Register

Vol. 70, No. 75

Wednesday, April 20, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 310

RIN 3206-AK03

Employment of Relatives

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on a plain language rewrite of its regulations regarding the employment of relatives as part of a broader review of OPM's regulations. The purpose of the revision is to make the regulations more readable.

DATES: *Effective Date:* May 20, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Scott A. Wilander by telephone at (202) 606-0830; by TTY at (202) 418-3134; by fax at (202) 606-0390; or by e-mail at sxwiland@opm.gov.

SUPPLEMENTARY INFORMATION: OPM published for comment on September 22, 2003, (at 68 FR 55012) proposed regulations revising Part 310 to make it more readable. We also proposed to eliminate subpart A because it merely restates the provisions of 5 U.S.C. 3110 which outline the legal restrictions on the employment of relatives.

Comments on Part 310

We received comments from two agencies on this proposal. Both agencies questioned the use of a question-and-answer format for regulations under Title 5, and indicated that they preferred the existing demonstrative statements for titles throughout the Code of Federal Regulations (CFR). We agree with this view and have adopted the agencies' recommendations.

Both agencies also opposed dropping provisions of the regulations that repeat the law. They believed it was beneficial

to include these provisions, if only to provide a one-stop-shopping service so that readers would not have to consult both the law and the regulations. We can appreciate this view and, as a result, in general we leave what we perceive to be critical parts of relevant law in regulation. We do not consider that to be necessary or appropriate in this instance, however, because OPM has no particular responsibility for administering this law.

One agency questioned whether the exception that permits the employment of relatives under certain circumstances "not to exceed 1 month," means 30 or 31 days. The agency suggested changing this provision in the regulations to read 30 days. We have adopted this suggestion.

This agency also suggested dividing the proposed rule into two parts to address two important points: (1) Legal restrictions on the employment of relatives; and (2) Exceptions to the legal restrictions on the employment of relatives. We believe this is a good suggestion and have adopted it.

Finally, one agency suggested making clear in the first sentence of proposed section 310.101 that the restriction on the employment of relatives applies to public officials. We have done so.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 310

Government employees.

U.S. Office of Personnel Management.

Dan G. Blair,

Acting Director.

■ Accordingly, OPM is revising 5 CFR part 310 to read as follows:

PART 310—EMPLOYMENT OF RELATIVES

Sec.

310.101 Legal restrictions on public officials in the employment of relatives.

310.102 Exceptions to the legal restrictions on the employment of relatives.

Authority: 5 U.S.C. 3110.

§ 310.101 Legal restrictions on public officials in the employment of relatives.

Section 3110 of title 5, United States Code, sets forth the legal restrictions on the employment of relatives.

§ 310.102 Exceptions to the legal restrictions on the employment of relatives.

Subsection (d) of 5 U.S.C. 3110 authorizes the Office of Personnel Management to prescribe regulations authorizing the temporary employment of relatives, in certain conditions, notwithstanding the restrictions. This regulation sets forth exceptions to the restrictions. When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in § 230.402(a)(1) of this title, a public official may employ relatives to meet those needs without regard to the restrictions on the employment of relatives in 5 U.S.C. 3110. Such appointments are temporary and may not exceed 30 days, but the agency may extend such an appointment for one additional 30-day period if the emergency need still exists at the time of the extension.

[FR Doc. 05-7842 Filed 4-19-05; 8:45 am]

BILLING CODE 6325-38-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AH71

Model Milestones For NRC Adjudicatory Proceedings

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to adopt model milestones for the conduct of NRC adjudicatory proceedings, to require a presiding officer to refer to the model milestones as a starting point for establishing a hearing schedule in an adjudicatory proceeding, and to manage the case in accordance with that schedule.

DATES: *Effective Date:* May 20, 2005. Hearings schedules for proceedings commencing on or after the effective date of this rule shall be established in

accordance with the final rule, unless otherwise directed by the Commission.

FOR FURTHER INFORMATION CONTACT:

Geary Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1639, e-mail gsm@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Purpose of Rulemaking.
- III. Rulemaking Procedure.
- IV. Section-by-Section Analysis.
- V. Voluntary Consensus Standards.
- VI. Finding of Categorical Exclusion.
- VII. Paperwork Reduction Act Statement.
- VIII. Regulatory Analysis.
- IX. Regulatory Flexibility Analysis.
- X. Backfit Analysis.
- XI. Small Business Regulatory Enforcement Fairness Act.

I. Background

In Spring 2001, the NRC published for public comment a proposed rule that would substantially revise the NRC's procedures for the conduct of adjudications (66 FR 19610; April 16, 2001). The proposed rule included 10 CFR 2.332 and 2.334, requiring the presiding officer to establish a hearing schedule and manage the case in accordance with that schedule.

In the statement of considerations (SOC) for the proposed Part 2 rule, the Commission requested comment on whether, in addition to proposed 10 CFR 2.332 and 2.334, either flexible milestones or firm schedules should be established in the NRC's rules of practice in 10 CFR Part 2 (66 FR 19610, 19620). Several commenters on the proposed rule supported the adoption by rule of binding schedules. However, one commenter opposed the adoption of flexible milestones or firm schedules. In the SOC for the final rule, 69 FR 2182 (January 14, 2004), the Commission stated that it would not establish by rulemaking generally-applicable milestones for the conduct of proceedings. Instead, it adopted provisions in 10 CFR 2.332 and 2.334 requiring a presiding officer to establish a schedule for the conduct of proceedings, to manage the case in accordance with that schedule, and to notify the Commission when it appears there will be a delay in the overall schedule of sixty (60) days or more.

II. Purpose of Rulemaking

Although the Commission decided not to adopt, as part of the final Part 2 rulemaking, generally-applicable schedules or milestones for the conduct of NRC adjudications, the Commission continued to evaluate the matter. The Commission's considerations were

directed towards identifying possible alternatives for governing the pace and timing of adjudicatory proceedings in a manner which fully recognizes the rights of all parties to a fair hearing process and meets the Commission's goal for effective and timely adjudicatory processes. After reviewing several alternatives the Commission has decided to adopt model milestones and changes to the generally-applicable procedures in Subpart C of Part 2 that would govern how these milestones are to be used by presiding officers.

The purpose of the model milestones and accompanying changes to Subpart C are to enhance the efficiency and effectiveness of NRC adjudications, while ensuring that the rights of all parties to fair, effective, and timely adjudications are maintained. The model milestones would be used to establish an initial schedule for an adjudication from which the presiding officer could depart, where appropriate, because of the circumstances of the particular proceeding. The model milestones are tailored to the different types of licensing and regulatory activities the NRC conducts and would better focus the limited resources of involved parties and the NRC. In addition, the model milestones will provide the presiding officer with the flexibility to manage the process reasonably and fairly in establishing initial schedules. The model milestones will also allow for the necessary adaptability in the hearing process by permitting departures from unnecessary interim steps to the major milestones. Thus, the model milestones will increase stakeholder confidence in the independence and fairness of the adjudicatory process by providing the presiding officer with a starting point to create a hearing schedule while maintaining flexibility to consider the individual and unique considerations inherent in any adjudication, and authorizing departures from the hearing schedule as unexpected circumstances arise.

The Commission looked at several alternatives to the concept of model milestones including: Model schedules, binding schedules, binding milestones, and case-by-case imposition by the Commission. Model schedules set forth specific days or periods of time for both the conduct and completion of hearing activities and actions, or the filing of certain specified types of motions. Thus, in contrast to the concept of model milestones, the underlying consideration in the development of the model schedules was the need for detailed and specific guidance to presiding officers on the time periods to

be accorded to each discrete step of the hearing. Binding schedules would contain the added requirement that the presiding officer report to the Commission any deviation from the applicable model schedule. Binding milestones would apply the more general and flexible milestones, as described above, to the proceedings but would require the presiding officer to report to the Commission when there was a deviation from the applicable model milestone. Finally, case-by-case oversight by the Commission was considered where the Commission would monitor the presiding officer's actions, and require the Commission's concurrence for certain issues.

Model schedules were rejected as an alternative because of the numerous advantages to utilizing model milestones, as compared with the alternative of model schedules. Model schedules are more detailed and prescriptive and departures from the model schedule must be justified and may themselves become the subject of collateral litigation. In addition, the wide variation of participants, the number of contentions, and other case-specific circumstances and considerations may make it difficult to adhere to a strict set of model schedules.

Binding milestones and binding schedules were rejected because the Commission deemed them too inflexible. Case-specific issues and circumstances require presiding officers to have the flexibility to handle cases on an individual basis without requiring Commission approval for each proposed alteration to the case schedule. In addition, unexpected occurrences or circumstances in the proceedings may require adjustments to the case schedule during the proceedings which would be more efficiently dealt with by the presiding officer without requiring Commission approval.

The Commission rejected the alternative of case-by-case imposition by the Commission because it interfered with matters normally left to the presiding officer. In addition, it would involve substantial expenditure of resources by the Commission. Finally, the Commission determined the goals of a more efficient and fair adjudication process could be accomplished in a less intrusive manner.

Compared with the four alternatives discussed above, model milestones allow for the necessary flexibility to adjust to the specific requirements of each individual hearing and will allow for strong case management and control by the presiding officer. Model milestones merely provide a starting point for the proceedings while

allowing for the necessary flexibility to adjust to the specific requirements of each hearing. Thus, milestones have the advantage of potentially resulting in less delay and unnecessary expenditure of the presiding officer's and parties' resources and should result in less motion practice over what hearing procedures to use.

III. Rulemaking Procedure

Because these amendments constitute minor administrative changes to the regulations, the notice and comment provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b)(A) and 5 U.S.C. 553(b)(B). As stated in section 553(b)(A), the requirement for notice and comment does not apply to "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice." The changes involved in the present rule are changes to agency procedure and practice and simply prescribe the manner in which the parties present themselves or their viewpoints to the agency. The rule does not alter the substantive rights or interests of the parties. In addition, the balance between the need for public participation in agency decisionmaking and the agency's competing interest in retaining latitude in organizing its operations weighs in favor of the agency because the rule merely establishes a starting point which the presiding officer will utilize to establish a hearing schedule. The public's rights to and interests in a hearing are not altered or affected by establishing this starting point to the hearing schedule. Thus, this rulemaking is exempt from the notice and comment provisions.

In addition, 5 U.S.C. 553(b)(B) provides that when an agency finds good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, the rulemaking is exempt from notice and comment requirements. In the present case, the model milestones are largely drawn from the time periods specifically provided in the January 14, 2004 revisions to 10 CFR Part 2, on which the public has already had an opportunity to comment as part of that rulemaking. Additionally, as noted above, the Commission adopted provisions in 10 CFR 2.332 and 2.334 requiring a presiding officer to establish a schedule for the conduct of proceedings, to manage the case against that schedule, and to notify the Commission when it appears there will be slippage in the overall schedule. Thus, the present rulemaking merely provides the starting point for the presiding officer to base the schedule of

proceedings. Public notice and comment was already provided for the implementation of a schedule and for the time periods. Thus, additional notice and comment procedures would be duplicative and unnecessary.

IV. Section-by-Section Analysis

Effective Date

The new provisions in §§ 2.332 and 2.334, requiring presiding officers to establish a hearing schedule for a proceeding based upon the applicable model milestones and to manage the case against that hearing schedule, are applicable to all proceedings commencing on or after the effective date of the final rule. For a proceeding in which a notice of hearing or a notice of opportunity for hearing are published in the **Federal Register**, the proceeding "commences" on the date of publication in the **Federal Register** of the notice of hearing, or the notice of opportunity for hearing or petition to intervene for that proceeding, as applicable. For a proceeding in which a notice of hearing or opportunity for hearing is not published in the **Federal Register**, the proceeding "commences" on the date that the first request for hearing or petition to intervene is received by the Commission.

Section 2.332 General Case Scheduling and Management

10 CFR 2.332(a) would be amended to add language requiring the scheduling order, created by the hearing officer, to also establish when the oral phase of the hearing will commence.

10 CFR 2.332(a)(2) would remove the term "and hearings" because the scheduling order is now required to establish the limits to commence the oral phase of the hearing under paragraph (a). Thus the language in (a)(2) permitting the scheduling order to contain such information is unnecessary.

A new 10 CFR 2.332(b) is added to require the presiding officer to utilize the applicable model milestones in Appendix B of this part as a starting point to establish the scheduling order. This section provides that appropriate modifications by the presiding officer may be made based upon all relevant information. The flexibility provided by this section allows the presiding officer to consider all relevant information, which includes but is not limited to the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, the NRC staff's schedule for completion of its safety and

environmental evaluations (paragraph (d) of this section), and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

Section 2.334 Implementing Hearing Schedule for Proceeding

10 CFR 2.334(a) contains conforming changes which reflect the change in 10 CFR 2.332(b). 10 CFR 2.332(b) now requires the presiding officer to utilize the applicable model milestones in Appendix B to this part as a starting point to create the hearing schedule.

The language in former 10 CFR 2.332(b) would be transferred to 10 CFR 2.334(b). The language is otherwise unchanged except for a modification to refer to "hearing schedule," as opposed to "schedule."

10 CFR 2.334(b) is renumbered 10 CFR 2.334(c). In addition, an added provision requires the presiding officer assigned to the proceeding to provide written notification to the Commission any time during the course of the proceeding when it appears that there will be a delay of greater than forty-five (45) days in meeting any of the dates for major activities in the hearing schedule established by the presiding officer under 10 CFR 2.332(a). This requirement ensures that the Commission is kept well informed regarding any potential delays in the hearing schedule and encourages the parties and presiding officer to adhere to the established hearing schedule if possible. An additional conforming change to refer to "hearing schedule" is also made.

Part 2, Appendix B—Model Milestones To Be Used by a Presiding Officer as a Guideline in Developing a Hearing Schedule for the Conduct of an Adjudicatory Proceeding in Accordance With 10 CFR 2.332

10 CFR Part 2, Appendix B contains four model milestones for adjudicatory hearings: The generic hearing track (Subpart L), license transfer (Subpart M), enforcement action (Subpart G), and enforcement action (Subpart N). In establishing a schedule, the presiding officer is required by 10 CFR 2.332 to use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (e.g., for filings) based upon all relevant information. Such information includes, but is not limited to, the number of contentions admitted, the complexity of the issues, the NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party

brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding.

10 CFR 2.334 allows the presiding officer to modify the hearing schedule from the initial milestones upon a finding by the presiding officer or the Commission of good cause. Factors such as whether the requesting party has exercised due diligence to adhere to the schedule, whether the requested change is the result of unavoidable circumstances, whether the other parties have agreed to the change, and the overall effect of the change on the schedule of the case are taken into account. In addition, the presiding officer is required by 10 CFR 2.334 to provide written notification to the Commission any time during the course of the proceeding when it appears that there will be a delay of greater than forty-five (45) days in meeting any of the dates for major activities in the hearing schedule established by the presiding officer under 10 CFR 2.332(a). Finally, 10 CFR 2.334 requires the presiding officer to provide written notification if completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the hearing schedule established under 10 CFR 2.332(a). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

Appendix B. I.—Model Milestones for a Hearing on an Enforcement Action Conducted Under 10 CFR Part 2, Subpart G

This model set of milestones applies to hearings in enforcement proceedings conducted under 10 CFR Part 2, Subpart G. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and G. The model milestones are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). In some cases, preparation of direct testimony and motions for summary disposition can proceed once initial mandatory disclosures have been made. The time periods set forth in the model milestones reflect these assumptions.

Appendix B. II.—Model Milestones for Hearings Conducted Under 10 CFR Part 2, Subpart L

This model set of milestones applies to hearings conducted under 10 CFR Part 2, Subpart L, including those on applications for combined licenses (COLs), renewed licenses, and license amendments. While such proceedings differ insofar as the scope and complexity of the NRC staff reviews for the requested actions may vary, such differences will be reflected in the staff's schedule for issuing its review documents in a particular type of action. Because the milestones are keyed to the staff's review schedule, separate milestones need not be identified for proceedings on the different types of actions. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. The model milestones include only the most significant events in the proceeding and are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) an oral hearing under 10 CFR 2.1207 will be held rather than a written hearing under 10 CFR 2.1208; and (iii) the final Safety Evaluation Report (SER) and final environmental document will be issued simultaneously.

Appendix B. III.—Model Milestones for a Hearing on a Transfer of a License Conducted Under 10 CFR Part 2, Subpart M

This model set of milestones applies to hearings on license transfer proceedings conducted under 10 CFR Part 2, Subpart M. Subpart M governs all adjudicatory proceedings on an application for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts C and M. The model milestones include only the most significant events in the proceeding, and are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) the parties do not file

a joint request under 10 CFR 2.1308 for a hearing consisting of written comments; (iii) the final Safety Evaluation Report (SER) is not necessary to resolve the issues to be litigated; (iv) the Commission itself does not serve as the presiding officer; and (v) the Commission does not order further taking of testimony after the presiding officer certifies the record to the Commission under 10 CFR 2.1319(f).

Appendix B. IV.—Model Milestones for a Hearing on an Enforcement Action Conducted Under 10 CFR Part 2, Subpart N

This model set of milestones applies to hearings on enforcement proceedings conducted under 10 CFR Part 2, Subpart N. Subpart N provides simplified procedures for the expeditious resolution of disputes among parties in an informal hearing process. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and N. The model milestones are based upon the following assumptions: (i) The issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The only discovery provided is the mandatory disclosure made by each party pursuant to 10 CFR 2.336.

V. Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is requiring the presiding officer to refer to the model milestones as a starting point for establishing a hearing schedule and managing the case against that schedule. This action does not constitute the establishment of a government-unique standard as defined in the Office of Management and Budget (OMB) Circular A–119 (1998).

VI. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). 10 CFR 51.22(c)(1) provides a categorical exclusion for amendments to certain parts of this chapter including 10 CFR Part 2. Therefore, neither an

environmental impact statement nor an environmental assessment has been prepared for this final rule.

VII. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements and, therefore is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Analysis

A regulatory analysis has not been prepared for this final rule because this rule is considered minor and not a substantial amendment; it has no economic impact on NRC licensees or the public.

IX. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), does not apply to a final rule for which a proposed rule was not issued, and thus is not applicable to this rulemaking.

X. Backfit Analysis

The NRC has determined that the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) do not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

XI. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In 10 CFR 2.332, the introductory text of paragraph (a) and paragraphs (a)(2) and (b) are revised to read as follows:

§ 2.332 General case scheduling and management.

(a) *Scheduling order.* The presiding officer shall, as soon as practicable after consulting with the parties by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that establishes limits for the time to file motions, conclude discovery, commence the oral phase of the hearing (if applicable), and take

other actions in the proceeding. The scheduling order may also include:

* * * * *

(2) The date or dates for prehearing conferences; and

* * * * *

(b) *Model milestones.* In developing the scheduling order under paragraph (a) of this section, the presiding officer shall utilize the applicable model milestones in Appendix B to this part as a starting point. The presiding officer shall make appropriate modifications based upon all relevant information, including but not limited to, the number of contentions admitted, the complexity of the issues presented, relevant considerations which a party may bring to the attention of the presiding officer, the NRC staff's schedule for completion of its safety and environmental evaluations (paragraph (e) of this section), and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be adjudicated by the parties in the proceeding.

* * * * *

■ 3. Section 2.334 is revised to read as follows:

§ 2.334 Implementing hearing schedule for proceeding.

(a) Unless the Commission directs otherwise in a particular proceeding, the presiding officer assigned to the proceeding shall, based on information and projections provided by the parties and the NRC staff, take appropriate action to maintain the hearing schedule established by the presiding officer in accordance with 10 CFR 2.332(a) of this part for the completion of the evidentiary record and, as appropriate, the issuance of its initial decision.

(b) *Modification of hearing schedule.* A hearing schedule may not be modified except upon a finding of good cause by the presiding officer or the Commission. In making such a good cause determination, the presiding officer or the Commission should take into account the following factors, among other things:

(1) Whether the requesting party has exercised due diligence to adhere to the schedule;

(2) Whether the requested change is the result of unavoidable circumstances; and

(3) Whether the other parties have agreed to the change and the overall effect of the change on the schedule of the case.

(c) The presiding officer shall provide written notification to the Commission any time during the course of the proceeding when it appears that there

will be a delay of more than forty-five (45) days in meeting any of the dates for major activities in the hearing schedule established by the presiding officer under 10 CFR 2.332(a), or that the completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the hearing schedule established under 10 CFR 2.332(a). The notification must include an explanation of the reasons for the projected delay and a description of the actions, if any, that the presiding officer or the Board proposes to take to avoid or mitigate the delay.

■ 4. New Appendix B to 10 CFR Part 2 is added to read as follows:

Appendix B to 10 CFR Part 2—Model Milestones To Be Used By a Presiding Officer as a Guideline in Developing a Hearing Schedule for the Conduct of an Adjudicatory Proceeding in Accordance With 10 CFR 2.332.

I. Model Milestones for a Hearing on an Enforcement Action Conducted Under 10 CFR Part 2, Subpart G

These model milestones would apply to enforcement proceedings conducted under 10 CFR Part 2, Subpart G. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of the proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (e.g., for filings) based upon all relevant information. Such information would include, but not be limited to, the complexity of the issues, any

other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues to be adjudicated in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and G.

The model milestones are based upon the following assumptions: (i) the issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305. In some cases, preparation of direct testimony and motions for summary disposition can proceed once initial mandatory disclosures have been made. The time periods set forth in the model milestones reflect these assumptions.

MODEL MILESTONES
[10 CFR Part 2, Subpart G]

<ul style="list-style-type: none"> • Within 20 days of date of enforcement order: 	Person subject to order files answer; if order immediately effective, motion to set aside immediate effectiveness due; requests for hearing due.
<ul style="list-style-type: none"> • Within 100 days of enforcement order: 	Presiding officer issues order on hearing request by person who is subject of enforcement order.
<ul style="list-style-type: none"> • Within 25 days of presiding officer decision granting hearing: 	Presiding officer sets initial schedule for the proceeding.
<ul style="list-style-type: none"> • Within 145 days of presiding officer decision granting hearing: 	Discovery complete.
<ul style="list-style-type: none"> • Within 155 days of presiding officer decision granting hearing: 	Motions for summary disposition due.
<ul style="list-style-type: none"> • Within 235 days of presiding officer decision granting hearing: 	Presiding officer decisions on motions for summary disposition.
<ul style="list-style-type: none"> • Within 245 days of presiding officer decision granting hearing: 	Prehearing conference (optional); presiding officer sets schedule for remainder of proceeding.
<ul style="list-style-type: none"> • Within 275 days of presiding officer decision granting hearing: 	Written testimony filed.
<ul style="list-style-type: none"> • Within 90 days of end of evidentiary hearing and closing of record: 	Presiding officer issues initial decision.

II. Model Milestones for Hearings Conducted Under 10 CFR Part 2, Subpart L

These model milestones would apply to proceedings conducted under 10 CFR Part 2, Subpart L, including those on applications for combined licenses (COLs), renewed licenses, and license amendments. While such proceedings differ insofar as the scope and complexity of the NRC staff reviews for the requested actions may vary, such differences will be reflected in the staff's schedule for issuing its review documents in a particular type of action. Because the milestones are keyed to the staff's review schedule, separate milestones are not identified for proceedings on the different types of actions.

As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (e.g., for filings) based upon all relevant information. Such information would include, but not be limited to, the number of contentions admitted, the complexity of the issues, the NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues

sought to be admitted for adjudication in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and L.

The model milestones include only the most significant events in the proceeding and are based upon the following assumptions: (i) the issues to be litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) an oral hearing under 10 CFR 2.1207 will be held rather than a written hearing under 10 CFR 2.1208; and (iii) the final Safety Evaluation Report (SER) and final environmental document will be issued simultaneously. The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

MODEL MILESTONES
[10 CFR Part 2, Subpart L]

<ul style="list-style-type: none"> • Within 140 of publication days of notice in FEDERAL REGISTER: 	Presiding officer decision on intervention petitions and admission of contentions.
<ul style="list-style-type: none"> • Within 55 days of presiding officer decision granting intervention and admitting contentions: 	Presiding officer to set initial schedule for proceeding, based on staff schedule for issuing draft and final SERs and any necessary NEPA document.

MODEL MILESTONES—Continued
[10 CFR Part 2, Subpart L]

<ul style="list-style-type: none"> • Within 30 days of issuance of SER and any necessary NEPA document: • Within 85 days of issuance of SER and NEPA document: • Within 14 days after presiding officer decision on amended/late-filed contentions: • Within 115 days of issuance of SER and NEPA document: • Within 155 days of issuance of SER and NEPA document: • Within 175 days of issuance of SER and NEPA document: • Within 90 days of end of evidentiary hearing and closing of record: 	<p>Proposed late-filed contentions on SER and necessary NEPA documents filed; motions for summary disposition on previously admitted contentions due.</p> <p>Presiding officer decision on admission of proposed late-filed contentions and motions for summary disposition; presiding officer sets schedule for remainder of proceeding.</p> <p>All parties complete updates of mandatory disclosures.</p> <p>Motions for summary disposition due.</p> <p>Written direct testimony filed.</p> <p>Evidentiary hearing begins.</p> <p>Presiding officer issues initial decision.</p>
--	---

III. Model Milestones for a Hearing on a Transfer of a License Conducted Under 10 CFR Part 2, Subpart M

These model milestones would apply to proceedings conducted under 10 CFR Part 2, Subpart M on applications for license transfer. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules (e.g., for filings) based upon all relevant information. Such information would include, but not be

limited to, the number of contentions admitted, the complexity of the issues, the NRC staff's schedule for completion of its safety and environmental evaluations, any other relevant consideration that a party brings to the attention of the presiding officer, and the NRC's interest in providing a fair and expeditious resolution of the issues sought to be admitted for adjudication in the proceeding. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C and M.

The model milestones include only the most significant events in the proceeding, and are based upon the following assumptions: (i) The issues to be litigated

will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; (ii) the parties do not file a joint request under 10 CFR 2.1308 for a hearing consisting of written comments; (iii) the final Safety Evaluation Report (SER) is not necessary to resolve the issues to be litigated; (iv) the Commission itself does not serve as the presiding officer; and (v) the Commission does not order further taking of testimony after the presiding officer certifies the record to the Commission under 10 CFR 2.1319(f). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305.

MODEL MILESTONES
[10 CFR Part 2, Subpart M]

<ul style="list-style-type: none"> • Within 100 days of publication of FEDERAL REGISTER notice of opportunity for hearing: • Within 30 days of order granting hearing petitions: • Within 12 days of completion of mandatory disclosures: • Within 45 days of scheduling order: • Within 25 days after hearing ends: 	<p>Presiding officer decision on intervention petitions and admission of contentions.</p> <p>NRC staff and other parties complete mandatory disclosures.</p> <p>Presiding Officer issues scheduling order to address, inter alia, scheduling of oral hearing, filing of written statements of position, direct testimony, and rebuttal testimony.</p> <p>Oral hearing commences.</p> <p>Presiding officer certifies hearing record to the Commission.</p>
---	---

IV. Model Milestones for a Hearing on an Enforcement Action Conducted Under 10 CFR Part 2, Subpart N

These model milestones would apply to enforcement proceedings conducted under 10 CFR Part 2, Subpart N. As required by 10 CFR 2.332 and 2.334, the presiding officer establishes, by order, a schedule for the conduct of each proceeding. In establishing

a schedule, the presiding officer should use these milestones as a starting point, make appropriate modifications to the milestones, and set detailed schedules based upon all relevant information. The model milestones are based on the Commission's Rules of Practice in 10 CFR Part 2, Subparts B, C, and N.

The model milestones are based upon the following assumptions: (i) The issues to be

litigated will involve both disputes over fact and issues of compliance with the Commission's regulations and requirements; and (ii) no petitions to intervene are filed pursuant to 10 CFR 2.309(a)–(b). The model milestones reflect electronic filing and service in accordance with 10 CFR 2.305. The only discovery provided is the mandatory disclosure made by each party pursuant to 10 CFR 2.336.

MODEL MILESTONES
[10 CFR Part 2, Subpart N]

<ul style="list-style-type: none"> • Within 20 of date of enforcement order: 	<p>Person subject to order files answer; if order immediately effective, motion to set aside immediate effectiveness due; requests for hearing due, including joint motion to use Subpart N procedures.</p>
---	---

MODEL MILESTONES—Continued
[10 CFR Part 2, Subpart N]

<ul style="list-style-type: none"> • Within 50 days of date of enforcement order: • Within 30 days of presiding officer decision granting hearing: • Within 40 days of presiding officer decision granting hearing: • Within 60 days of presiding officer decision granting hearing: • Within 30 days of end of evidentiary hearing and closing of record: 	<p>Presiding officer decision on requests for hearing and confirms use of Subpart N procedures (note: if presiding officer concludes that Subpart N procedures should not be used, the Model Milestone for Enforcement Actions under Subpart G are applicable).</p> <p>Mandatory disclosures complete.</p> <p>Prehearing conference to specify issues for hearing and set schedules for remaining course of proceeding.</p> <p>Evidentiary hearing begins.</p> <p>Presiding officer issues initial decision.</p>
---	--

Dated at Rockville, Maryland, this 14th day of April, 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05-7846 Filed 4-19-05; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-04-126]

RIN 1625-AA09

Drawbridge Operation Regulations: Cheesequake Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the S35 Bridge, mile 0.0, across Cheesequake Creek at Morgan, South Amboy, New Jersey. This final rule allows the bridge to open on the hour only from 7 a.m. to 8 p.m., May 1 through October 31. In addition, this rule allows the bridge owner to require a 4-hour advance notice for openings from 11 p.m. to 7 a.m. all year, and all day from November 1 through April 30. This rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times while still providing for the reasonable needs of navigation.

DATES: This rule is effective May 20, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01-04-126) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7

a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Bridge Administrator, First Coast Guard District, (212) 668-7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 17, 2004, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Cheesequake Creek, New Jersey, in the **Federal Register** (69 FR 75493). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The S35 Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing drawbridge operation regulations listed at 33 CFR 117.709(a), require the bridge to open on signal; except that, from May 15 through October 15 from 7 a.m. to 7 p.m., the draw need only open on the hour. From December 1 through March 31 from 11 p.m. to 7 a.m., the draw need not be opened for the passage of vessels.

Cheesequake Creek is navigated predominately by small recreational vessels between April and November only. The bridge seldom opens during the winter months December through March.

The bridge owner, New Jersey Department of Transportation (NJDOT), requested that the drawbridge operation regulations for the S35 Bridge be changed to allow the bridge to open on the hour only from 7 a.m. to 8 p.m., May 1 through October 31. The hourly openings are currently in effect from 7 a.m. to 7 p.m., May 15 through October 15.

In addition, this final rule allows the bridge owner to require a 4-hour advance notice for bridge openings from 11 p.m. to 7 a.m. all year round and all day from November 1 through April 30. Bridge openings during the on-call time

period may be obtained by calling the number posted at the bridge.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and as a result, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that the bridge will continue to open for vessel traffic during the time periods vessel traffic has historically required the bridge to open.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will continue to open for vessel traffic during the time periods vessel traffic has historically required the bridge to open.