

RULEMAKING ISSUE (Affirmation)

July 3, 2007

SECY-07-0109

FOR: The Commissioners
FROM: Karen D. Cyr
General Counsel
SUBJECT: FINAL E-FILING RULE

PURPOSE:

To request Commission approval of the final E-Filing rule for publication in the Federal Register.

BACKGROUND:

On October 10, 2003, the Commission issued a final rule called *Electronic Maintenance and Submission of Information* (E-Rule) which provided for licensees, applicants, vendors, and members of the public to electronically submit documents to the NRC. However, the E-Rule, did not apply to adjudicatory proceedings. On December 16, 2005, the Commission issued a proposed rule, *Use of Electronic Submissions in Agency Hearings* (E-Filing) rule to extend the use of electronic submissions to agency adjudications other than the high-level waste (HLW) repository proceeding. The Commission years ago promulgated regulations requiring electronic filings in that proceeding. The E-Filing rule eliminates the need for paper copies and directs participants to file electronically.

DISCUSSION:

The purpose of the E-Filing rule is to eliminate the need for paper copies in agency adjudications, thereby decreasing expense and increasing efficiency. Although almost all participants in adjudicatory proceedings currently file and serve by electronic mail, they are still required to submit paper copies under 10 CFR Part 2. The final E-Filing rule requires documents in agency adjudications to be electronically submitted through the agency's Electronic Information Exchange (EIE) to the E-Submittal system. For maximum flexibility, the rule provides an exemption that allows participants to file documents on paper upon a showing of "good cause" that the participant cannot file electronically. Few requests to file by paper are expected because almost all participants currently submit filings by e-mail.

CONTACT: Steven Hamrick
301-415-4106

An explanation of E-Filing's major features was provided with the proposed E-Filing rule in SECY-05-0181 and is not reiterated in this paper. The proposed E-Filing rule was accompanied by a guidance document entitled, *Proposed Guidance for Submission of Electronic Docket Materials Under 10 CFR Part 2, Subpart C, 10 CFR Part 13, 10 CFR Part 110*. This guidance document is being merged with previous guidance documents on electronic submissions to the Commission, including *Appendix A: Guidance for Electronic Submissions to the Commission* (this accompanied the E-Rule), *Guidance for Submission of Electronic Documents Under 10 CFR Part 2, Subpart J* (this applies to filings in the High Level Waste Repository proceeding), and the *E-Filing/E-Submittal Proposed Guidance*. NRC Staff recently sought public comment on the latest version of the consolidated guidance document, *Guidance for Electronic Submissions to the NRC*, which will be published in the *Federal Register* with the Final Rule. The provisions pertaining to electronic filings in non-high-level waste adjudications will not be used until the Commission promulgates the E-Filing Rule. The Guidance is not being submitted to the Commission with the Final Rule because it is a technical document that provides detailed filing guidance and does not raise policy issues.

On January 10, 2006, a public meeting was held to discuss and receive comments on the proposed E-Filing rule, and to demonstrate electronic filings. The comments made and questions asked during the public meeting pertained mostly to the concept of electronic filing and the steps to complete electronic filing, topics addressed in the guidance document. In addition, the agency received two sets of written comments on the proposed rule, which addressed the technical aspects of electronic filing contained in the guidance document accompanying the proposed E-Filing rule. No comments were received in opposition to the proposed rule.

The E-Filing rule is currently being piloted in the Vogtle Early Site Permit proceeding. On December 15, 2006, the Atomic Safety and Licensing Board Panel Chief Administrative Judge ordered the parties in that case to use the E-Submittal system for all future filings. This pilot allows the various stakeholders to test the E-Submittal system from a technical perspective, as well as for user friendliness. The NRC staff's intent is to resolve any issues arising under the pilot before the final E-Filing rule becomes effective. To date, only a few technical issues have been reported by the Vogtle participants, and the Office of the Secretary and the Office of Information Services have worked with participants to resolve them.

We have revised the rule to address the public comments and our experience with electronic filings. The only policy change we propose to make is rather than requiring electronic filings for proceedings under Part 110 (export and import license applications), we would make electronic filing optional because there are few Part 110 proceedings and typically in such proceedings there are only a small number of filings.

Enclosure 1 to this SECY paper contains a discussion of computer security and privacy issues arising from the implementation of the E-Filing rule. OGC requests that Enclosure 1 not be made available to the public.

SCHEDULING:

We recommend making the final E-Filing rule effective on October 1, 2007, to ensure its applicability to proceedings on expected COL applications. The final rule will only apply to new proceedings noticed on or after that date. However, participants in ongoing proceedings may elect to use E-Filing after October 1 upon agreement of all participants and the presiding officer. To save time and money, switching from paper copies to E-Filing in ongoing proceedings is encouraged.

Commission approval of the final rule by the end of July would allow for publication of the rule in the Federal Register in mid August. This would allow sufficient time for hearing participants to obtain digital certificates before the effective date of the rule.

RESOURCES:

The President's budget for FY 2008 provides funds needed for implementation of the E-Filing rule. Public Document Room staff will serve as the help desk to aid participants in NRC adjudications. Sufficient funds are available in FY 2007 to be ready to implement the E-Filing rule on October 1.

COORDINATION:

Comments from the Office of Commission Appellate Adjudication, the Atomic Safety and Licensing Board Panel, the Office of the Secretary, the Office of Administration, the Office of International Programs, and the Office of Information Services have been incorporated. The Office of the Chief Financial Officer has reviewed the resource estimates.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication in the *Federal Register* the final amendments to 10 CFR Parts 1, 2, 13, and 110 (Enclosure) by July 31, 2007.
2. To satisfy the requirement of the Regulatory Flexibility Act , 5 U.S.C. 605 (b), certify that this rule if promulgated will not have significant impact on a substantial number of small entities. This certification is included in the enclosed *Federal Register* notice.
3. Note:
 - a. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605 (b);

- b. The Staff has determined that this action is not a “major rule,” as defined in the Congressional Review Act (CRA) of 1996 [5 U.S.C. 804(2)] and has confirmed this determination with the OMB. The appropriate Congressional and Government Accountability Office contacts will be informed.
- c. The appropriate Congressional committees will be informed;
- d. A press release will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register; and
- e. Enclosure 1 to this SECY paper contains a discussion of computer security and privacy issues. Therefore, Enclosure 1 should not be made publicly available. There is no objection to the release of the remaining portion of the SECY paper and the *Federal Register* Notice after the Staff Requirements Memorandum is issued.

Enclosure:

- (1) Computer Security and Privacy Considerations
- (2) *Federal Register* Notice

/RA/

Karen D. Cyr
General Counsel

this determination with the OMB. The appropriate Congressional and Government Accountability Office contacts will be informed.

- c. The appropriate Congressional committees will be informed;
- d. A press release will be issued by the Office of Public Affairs when the final rulemaking is filed with the Office of the Federal Register; and
- e. Enclosure 1 to this SECY paper contains a discussion of computer security and privacy issues. Therefore, Enclosure 1 should not be made publicly available. There is no objection to the release of the remaining portion of the SECY paper and the *Federal Register* Notice after the Staff Requirements Memorandum is issued.

Enclosure:

- (1) Computer Security and Privacy Considerations
- (2) *Federal Register* Notice

Karen D. Cyr
General Counsel

G:\LC\Hamrick\E-Filing Rule\July 2.\E-FilingfinalruleSECY_mtd.wpd

OFFICE	OGC		OGC		OGC		OGC	
NAME	S. Hamrick		T. Rothschild		J. Gray		K. Cyr	
DATE	07/ 2 /07		07/ 2 /07		07/ 2 /07		07/ 3 /07	

OFFICIAL RECORD COPY