



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

June 13, 1989

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for Operations

FROM: James A. Fitzgerald *JAF*
Assistant General Counsel for
Adjudications and Opinions

SUBJECT: PROPOSED AMENDMENT TO 10 CFR PART 2.

Attached is a proposed amendment to 10 C.F.R. Part 2 which we have drafted pursuant to a request from the Office of the Secretary. The proposed amendment adds a new subsection to 10 C.F.R. 2.712 and describes procedures for filing copies of pleadings with the Office of the Secretary. A draft Federal Register notice which has been cleared with DFIPS/RPB is enclosed.

In accordance with NRC Manual Chapter 0103-0310, we have coordinated the proposed amendment with the Secretary of the Commission, the Chairman of the Atomic Safety and Licensing Appeal Panel, and the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel. Their comments have been incorporated. This rule change does not involve a "significant question of policy" as defined in NRC Manual Chapter 0103-039. Therefore, you have authority to issue this rule under NRC Manual Chapter 0103-0213.

We recommend that you issue the proposed rule effective thirty (30) days after publication in the Federal Register.

CONTACT:
Charles F. Mullins
x-21606

Enclosure:
Federal Register Notice

cc: Christine N. Kohl, ASLAF
B. Paul Cotter, Jr., ASLBP
Samuel J. Chilk, SECY
David L. Meyer, RPB

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Nuclear Regulatory Commission

10 CFR Part 2

RIN: 3150-AD22

Manner of Service of Pleadings
Upon the Secretary of the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: This final rule makes minor changes in the Commission's rules of practice by requiring that all parties in NRC proceedings file copies of all pleadings filed with any agency adjudicatory tribunal with the Office of the Secretary in the same or equivalent manner in which they were filed with the tribunal. This will result in the Office of the Secretary receiving the pleading on approximately the same day as the tribunal.

EFFECTIVE DATE: [Insert date thirty days from publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Charles E. Mullins, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 492-1606

SUPPLEMENTARY INFORMATION:

The Commission has discovered that in individual proceedings before its various Atomic Safety and Licensing Boards, Atomic Safety and Licensing Appeal Boards, and Administrative Law Judges, some motions and pleadings addressed to those tribunals are served on (delivered to) those tribunals in a more expeditious manner than they are served on the Secretary of the Commission. For instance, the tribunals sometimes receive filings by

telecopier or telefax, by express mail, or by hand delivery, while the Secretary's service copies of the same documents are sent by first-class (regular) mail. As a result, the Office of the Secretary, which is responsible for maintaining the official docket of all adjudicatory proceedings as well as the Public Document Room, often does not receive these filings until several days after they have been received by the parties and the tribunals. Under these circumstances, it is difficult for the Office of the Secretary to maintain the official agency docket in a timely fashion. See 10 CFR 1.25 and 2.702.

This addition to the Commission's rules of practice requires that parties serve the Office of the Secretary in the same or equivalent manner that they serve the tribunal before which the proceeding is being conducted. For example, if a party serves the tribunal by express or overnight mail, it should also serve the Secretary by express or overnight mail so that the Secretary will receive the pleading at approximately the same time as the tribunal and the other parties to the proceeding. Likewise, parties could serve the tribunal by hand while serving the Secretary by telecopier or telefax. Again, this equivalent service will ensure that the Secretary will receive copies of the pleadings at approximately the same time as the tribunal and the other parties to the proceeding. This change will allow the Secretary to maintain the official dockets in close harmony and synchronization with the actual progress of the tribunal's proceedings.

The rule makes an exception for those proceedings being held outside the Washington, DC, area when the adjudicatory tribunal is physically present in such a location. In those cases, the rule allows parties who serve the

tribunal and the opposing parties by personal service to serve the Secretary by overnight mail. The rule also provides that service of pre-filed testimony and demonstrative evidence (such as maps and exhibits) on the Secretary may be accomplished by normal mail in all cases.

Because this amendment relates solely to matters of agency practice, good cause exists for omitting notice of proposed rulemaking and public procedures thereon as unnecessary.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion J: CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule contains no new or amended information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. § 3501 et seq.).

Regulatory Analysis

The Commission and its Secretary have a demonstrated need for receiving copies of filings in NRC adjudications in a more timely fashion. This rule change which requires service upon the Secretary of filings by the

same or equivalent method that they are served upon the adjudicatory tribunal is the only means available to achieve this end.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 2

Part 2 - Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, 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 amendment to 10 CFR Part 2:

PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

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.

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. 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, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 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. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). 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 and Table 1A of Appendix C 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). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Paragraphs (d), (e), and (f) of § 2.712 are redesignated paragraphs (e), (f), and (g), respectively and new paragraph (d) is added to § 2.712 to read as follows:

§ 2.712 Service of papers, methods, proof.

* * * * *

(d) Service on the Secretary.

(1) All pleadings must be served on the Secretary of the Commission in the same or equivalent manner, i.e., telefax, express mail, personal delivery, or courier, that they are served upon the adjudicatory tribunals and the parties to the proceedings so that the Secretary will receive the pleading at approximately the same time that it is received by the tribunal to which the pleading is directed.

(2) When pleadings are personally delivered to tribunals while they are conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished by overnight mail.

(3) Service of pre-filed testimony and demonstrative evidence (e.g., maps and othe physical exhibits) on the Secretary may be made by first-class mail in all cases.

(4) The addresses for the Secretary are:

(i) First class mail:

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555;

(ii) Express mail:

Office of the Secretary
Sixteenth Floor, One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

(iii) Telecopier:

(301) 492-1672 (3M);
(301) 492-0275 (DEX); and
(301) 492-1777 (Verification).

For the Nuclear Regulatory Commission,

Victor Stello, Jr.
Executive Director for Operations.

Dated at Rockville, Maryland, this ____ day of _____, 1989.