



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

May 22, 1989

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

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

SUBJECT: PROPOSED AMENDMENTS TO 10 CFR PART 2

Pursuant to a request from the Office of the Secretary, this Office has drafted an amendment to the Commission's Rules of Practice, 10 C.F.R. Part 2. The proposed amendment adds a new subsection (d) to 10 C.F.R. § 2.712 and re-letters current subsections (d) and (e) as (e) and (f), respectively. We have attached a draft federal register notice for your review.

In accordance with NRC Manual Chapter 0103-0310, we have coordinated this proposed amendment with 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 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 this rule as immediately effective.

Attachment:  
Draft Fed. Reg. Notice

Contact:  
Charles E. Mullins  
x-21606

Nuclear Regulatory Commission

10 CFR Part 2

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 C.F.R. § 1.25; § 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 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 10 C.F.R. § 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

#### 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.

#### Paperwork Reduction Review

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.).

#### Backfit Analysis

This final rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a nuclear reactor facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 C.F.R. § 50.109(c) is required for this final rule.

#### Regulatory Flexibility Certificate

In accordance with the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the NRC certifies that this final rule does not have a significant economic impact upon a substantial number of small entities. Commission licensees generally do not fall within the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. § 632, the Small Business Act Size Standards set out in regulations issued by the Small Business Administration at 13 C.F.R. Part 121, or the NRC's size standards published at 50 Fed. Reg. 50241 (Dec. 9, 1985). Furthermore, intervenors who probably would fall within the pertinent Small Business Act definition will not encounter a significant economic impact from the final rule. Parties to Commission proceedings are not required to file any additional copies of their motions or pleadings. They are simply required to serve another copy in the manner they use to serve the Board before which they appear. Thus, any additional expenses incurred by the intervenors would

be only the modest cost of the special service of the Secretary's copy of the pleading at issue.

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 C.F.R. 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.).

10 C.F.R. § 2.712 is revised to contain sub-section (d) which shall read as follows:

(d) Service on the Secretary.

(1) All pleadings shall 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, D.C. area, service on the Secretary may be accomplished by overnight mail.

(3) Service of pre-filed testimony and demonstrative evidence (e.g., maps and other 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, D.C. 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).

Subsections (d) and (e) of 10 C.F.R. § 2.712 are re-lettered (e) and (f), respectively.