

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 2**

**[NRC-2023-0210]**

**RIN 3150-AL09**

**Administrative Changes to Agency Rules of Practice and Procedure**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to revise the agency's rules of practice and procedure to improve access to documents and make e-filing rules technology neutral, to delete an obsolete regulation, to clarify the applicability of subpart L and subpart N procedures, to enhance internal consistency for page limit requirements, to enhance consistency with the Federal Rules of Evidence for "true copies," and to better reflect current Atomic Safety and Licensing Board Panel practice regarding admission of evidence.

**DATES:** The final rule is effective November 5, 2024, unless significant adverse comments are received by September 23, 2024. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the *Federal Register*. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the *Federal Register*.

**ADDRESSES:** Please refer to Docket ID NRC-2023-0210 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0210. Address questions about NRC dockets to Helen Chang; telephone: 301-415-3228; email: [Helen.Chang@nrc.gov](mailto:Helen.Chang@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

You can read a plain language description of this direct final rule at <https://www.regulations.gov/docket/NRC-2023-0210>. For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ethan Licon, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-1016, email: [Ethan.Licon@nrc.gov](mailto:Ethan.Licon@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

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## I. Obtaining Information and Submitting Comments

### A. Obtaining Information

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- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0210.
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### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0210 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all

comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## **II. Rulemaking Procedure**

Because the NRC considers this action to be non-controversial, the NRC is using the “direct final rule procedure” for this rule. This amendment is effective on November 5, 2024. However, if the NRC receives significant adverse comments on this direct final rule by September 23, 2024, then the NRC will publish a document that withdraws this action and will address the comments received in a subsequent final rule or as otherwise appropriate. In general, absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the **ADDRESSES** section of this document.

### **III. Background**

The NRC's regulations governing the conduct of adjudicatory proceedings before the agency are contained in part 2 of title 10 of the Code of Federal Regulations (10 CFR), "Agency Rules of Practice and Procedure." Periodically, the NRC has amended these rules, including adopting changes in 2004 to enhance efficiency; in 2012 to promote fairness, efficiency, and openness; in 2016 to reflect technological advances and current agency practice; and in 2020 to reflect Commission case law, Supreme Court precedent, and current agency practice. Since the last update to the agency's rules of practice and procedure, the NRC has identified additional provisions that should be updated to improve access to documents and make e-filing rules technology neutral, to delete an obsolete regulation, to clarify the applicability of Subpart L and Subpart N procedures, to enhance internal consistency for page limit requirements, to enhance consistency with the Federal Rules of Evidence for "true copies," and to better reflect current Atomic Safety and Licensing Board Panel practice regarding admission of evidence.

## **IV. Discussion**

### **Improving E-Filing and Access to Documents**

This direct final rule makes targeted changes to §§ 2.4, 2.302, 2.304, 2.305, and 2.306 to clarify and make technology neutral the description of the NRC's E-Filing system in 10 CFR part 2. Most significantly, this direct final rule eliminates references to "digital ID certificate" and "digital ID certificates" throughout 10 CFR part 2. The NRC is removing the definitions for "Digital ID certification" and "NRC Public Document Room," revising existing definitions for "Electronic Hearing Docket" and "Public Document Room," and adding new definitions for "Identification and authentication," and "Portable storage media." The NRC anticipates that future updates to its E-Filing system will eliminate the need for participants to obtain digital ID certificates and will instead use a more modern method for electronic identification and credentialing. Therefore, these changes will revise 10 CFR part 2 to accommodate methods of electronic identification and credentialing other than the use of digital ID certificates. These changes also will clarify the requirements related to exemptions from the use of the E-filing system and specify email as an alternative filing method pursuant to an exemption.

### **Settlement and Compromise**

This direct final rule removes and reserves § 2.203. Section 2.203 currently applies to settlement and compromise in enforcement proceedings; however, § 2.203 is duplicative of § 2.338(i), which governs settlement generally. This change also is consistent with the apparent intent of the Commission to delete § 2.203 in the 2004 revision to Part 2 (69 FR 2182, 2225), which consolidated settlement requirements into § 2.338 and removed other references to "Chief Administrative Law Judge."

### **Admissibility of Duplicates**

This direct final rule revises §§ 2.337(d) and 2.711(b) and (h) to use consistent terminology with Rule 1003 of the Federal Rules of Evidence, “Admissibility of Duplicates,” which provides that a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate. As a result, this revision would streamline the process for the admission of duplicates. In addition, this direct final rule revises these regulations to enhance consistency with the Atomic Safety and Licensing Board Panel’s practice for marking exhibits.

#### **Applicability of Subpart L Procedures**

This direct final rule revises § 2.1200 to clarify the scope of Subpart L as not governing all proceedings and to simplify text that was duplicative of 10 CFR 2.310.

#### **Applicability of Subpart N Procedures**

This direct final rule revises § 2.1400 to clarify the scope of Subpart N as an optional set of procedures available for certain proceedings and to simplify text that was duplicative of 10 CFR 2.310.

#### **Page Limits for Petitions for Review**

This direct final rule revises § 2.341(b)(2) to make the page-limit requirement for petitions for review consistent with the page-limit requirement in 10 CFR 2.341(c) for briefs upon review by increasing the page limit for petitions for review from twenty-five (25) pages to (30) thirty pages.

#### **Time to Request a Stay Under § 2.1213(a)**

This direct final rule revises § 2.1213(a) by increasing the time to file a request for a stay of staff action under § 2.1202(a) from 5 days to 7 days. This change will make

the time to file a request for a stay consistent, regardless of the day of the week staff issues a notification of license issuance pursuant to § 2.1202(a).

### **Written Testimony in Subpart G Proceedings**

This direct final rule revises § 2.711(b) to reflect current Atomic Safety and Licensing Board Panel practice by requiring written testimony to be offered and admitted into evidence as an exhibit rather than requiring the written testimony to be incorporated into the transcript of record as if read, though it may still be incorporated into the transcript as if read at the discretion of the presiding officer.

### **IX. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885).

### **X. National Environmental Policy Act**

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(1), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.



## **XI. Paperwork Reduction Act**

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid Office of Management and Budget control number.

## **XII. Congressional Review Act**

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801-808).

### **List of Subjects in 10 CFR Part 2**

Administrative practice and procedure, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, 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 – AGENCY RULES OF PRACTICE AND PROCEDURE**

1. The authority citation for part 2 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note).

2. In § 2.4:

- a. Remove the definition of “Digital ID certificate”;
- b. Revise the definition of “Electronic Hearing Docket”;
- c. Add in alphabetical order a definition for “Identification and authentication”;
- d. Remove the definition of “NRC Public Document Room”;
- e. Add in alphabetical order a definition for “Portable storage media”; and
- f. Revise the definition of “Public Document Room”.

The revisions and additions read as follows:

### **§ 2.4 Definitions.**

\* \* \* \* \*

*Electronic Hearing Docket* means the publicly available NRC information system that receives, stores, and provides online access via the NRC Website to all publicly filed documents in NRC adjudications and to non-publicly filed documents for authorized participants pursuant to a protective order and that is available for use during a hearing to the extent circumstances, including the availability of internet access, permit.

\* \* \* \* \*

*Identification and authentication* means the use of the NRC’s electronic credentialing program to validate a participant’s identity.

\* \* \* \* \*

*Portable storage media* means a physical piece of hardware that can be added to and removed from a computing device or network for the purpose of transferring or storing electronic files. Examples include, but are not limited to, optical storage media such as CDs and DVDs as well as non-optical media such as solid-state drives and flash drives.

\* \* \* \* \*

*Public Document Room* means the facility at the NRC at which agency public records will ordinarily be made available for inspection.

\* \* \* \* \*

**§ 2.203 [Removed and Reserved]**

3. Remove and reserve § 2.203.

**§ 2.302 [Amended]**

4. In § 2.302:

a. Amend paragraph (a) by removing the reference “(g)(1)” and adding in its place the reference “(h)(1) or (2)”;

b. Amend paragraph (b)(1) by removing “or” at the end of the paragraph;

c. Amend paragraph (b)(2) by removing the period and adding in its place “; or”;

d. Add paragraph (b)(3);

e. Revise paragraphs (d)(4), (f), and (g); and

f. Add paragraph (h).

The additions and revisions read as follows:

**§ 2.302 Filing of documents.**

(b) \* \* \*

\* \* \* \* \*

(3) Email: [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov).

\* \* \* \* \*

(d) \* \* \*

(4) If a filing must be submitted by two or more methods, such as a filing that must be transmitted electronically as well as physically delivered or mailed on portable storage media as described in paragraph (g)(2) of this section, the filing is complete when all methods of filing have been completed.

\* \* \* \* \*

(f) *Identification and authentication.* (1) The NRC provides identification and authentication services that permit participants in the proceeding to access the E-Filing system to file documents, serve other participants, and retrieve documents electronically filed in the proceeding.

(2) Any participant or participant representative that does not have an identification and authentication credential must request one from the NRC before that participant or representative intends to make its first electronic filing to the E-Filing system. A participant or representative may apply for an identification and authentication credential on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>.

(g) *Filing method requirements.* (1) Unless otherwise provided by order, all filings must be made in an electronic format (i.e., computer files) via the E-Filing system in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the filing, and process and retrieve it a single page at a time. Detailed guidance on electronic formats that will meet these requirements may be found on the NRC website at <https://www.nrc.gov/site-help/e-submittals.html>.

(2) If a filing contains electronic portions that may not be transmitted via the E-Filing system for reasons of security or electronic format (as defined in paragraph (g)(1)), the portions not containing those sections must be transmitted electronically via the E-Filing system. In addition, portable storage media containing the entire electronic filing must be physically delivered or mailed.

(3) When an electronically formatted image or graphic of a physical object would not provide sufficient contextual value, the physical object may be physically delivered or mailed for inclusion in the adjudicatory record.

(4) In the circumstances described in paragraphs (g)(2) and (3) of this section, the submitter does not need to apply to the Commission or presiding officer for an exemption to deviate from the requirements in paragraph (g)(1) of this section.

(h) *Electronic filing exemptions*—(1) *Exemption from electronic transmission via the E-Filing system.* Upon a finding of good cause, the Commission or presiding officer may grant an exemption from the electronic transmission requirements found in paragraph (g)(1) of this section to a participant who is filing electronic documents. The exempt participant is permitted to file and serve electronic documents by e-mail or by physically delivering or mailing portable storage media containing the documents. A participant granted this exemption would still be required to meet the electronic formatting requirements in paragraph (g)(1) of this section.

(2) *Exemption from electronic formatting and electronic transmission requirements.* Upon a finding of good cause, the Commission or presiding officer can exempt a participant from both the electronic formatting and electronic transmission requirements in paragraph (g) of this section. A participant granted such an exemption can file and serve paper documents either in person or by courier, express mail, some other expedited delivery service, or first-class mail, as ordered by the Commission or presiding officer.

(3) *Requesting an exemption.* A filer seeking an exemption under paragraph (h)(1) or (2) of this section must submit the exemption request with its first filing in the proceeding. In the request, a filer must show good cause as to why it cannot file electronically. The filer may not change its formats or delivery methods for filing until a ruling on the exemption request is issued. Exemption requests under paragraph (h)(1) or (2) of this section sought after the first filing in the proceeding will be granted only if the requestor shows that the interests of fairness so require.

5. In § 2.304, revise the first sentence in paragraph (d)(1) introductory text and revise paragraphs (d)(1)(i) and (ii) to read as follows:

**§ 2.304 Formal requirements for documents; signatures; acceptance for filing.**

\* \* \* \* \*

(d) \* \* \*

(1) An electronic document must be signed using a participant's or a participant representative's identification and authentication credential. \* \* \*

(i) When signing an electronic document using an identification and authentication credential, the signature page for the electronic document should contain a typed signature block that includes the phrase "Signed (electronically) by" typed onto the signature line; the name and the capacity of the person signing; the person's address, phone number, and email address; and the date of signature.

(ii) If additional individuals need to sign an electronic document, including any affidavits that accompany the document, such individuals must sign by inserting a typed signature block in the electronic document that includes the phrase "Executed in Accord with 10 CFR 2.304(d)" or its equivalent typed on the signature line as well as the name and the capacity of the person signing; the person's address, phone number, and e-mail address; and the date of signature to the extent any of these items are different from the information provided for the credentialed signer.

\* \* \* \* \*

6. In § 2.305:

a. Amend the second sentence of paragraph (c) introductory text by removing the word "Upon" and adding in its place the phrase "In accordance with § 2.302(g)(2) or (3) or upon";

b. Revise paragraph (c)(2);

c. Amend paragraph (c)(3) by removing "§ 2.302(g)(3)" and adding in its place "§ 2.302(h)(2)";

d. Amend paragraph (e)(2) by removing the phrase “courier, express mail, or expedited delivery service” and adding in its place “other service methods permitted by NRC regulations”;

e. Amend paragraph (e)(4)(ii) by removing “and” at the end;

f. Amend paragraph (e)(4)(iii) by removing the period and adding “; and” in its place; and

g. Add paragraph (e)(4)(iv).

The revision and addition read as follows:

**§ 2.305 Service of documents, methods, proof.**

\* \* \* \* \*

(c) \* \* \*

(2) A participant granted an exemption under § 2.302(h)(1) will serve the presiding officer and the participants in the proceeding that filed electronically by email or by physically delivering or mailing portable storage media containing the electronic document.

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(iv) Email: *Hearing.Docket@nrc.gov*.

\* \* \* \* \*

**§ 2.306 [Amended]**

7. In § 2.306, amend the first sentence of paragraph (b)(3) by removing the word “optical” and adding in its place the word “portable”.

8. In § 2.337, revise paragraph (d) to read as follows:

**§ 2.337 Evidence at a hearing.**

\* \* \* \* \*

(d) *Exhibits*. Exhibits must be marked in accordance with any instructions provided by the presiding officer. Exhibits must be filed through the agency’s E-Filing

system, unless the presiding officer grants an exemption permitting an alternative filing method under § 2.302(h)(1) or (2) or unless the filing falls within the scope of § 2.302(g)(2) or (3) as not being subject to electronic transmission. When an exhibit is not filed through the E-Filing system, a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate. Information that a party references through hyperlinks in an exhibit must be submitted by that party, in its entirety, either as part of the exhibit or as a separate exhibit, for that information to be included in the evidentiary record.

\* \* \* \* \*

### **§ 2.341 [Amended]**

9. In § 2.341, amend paragraph (b)(2) introductory text by removing the phrase "twenty-five (25) pages" and adding in its place the phrase "thirty (30) pages".

10. In § 2.711, revise paragraphs (b) and (h) to read as follows:

### **§ 2.711 Evidence.**

\* \* \* \* \*

(b) *Testimony.* The parties shall submit direct testimony of witnesses in written form, unless otherwise ordered by the presiding officer on the basis of objections presented. In any proceeding in which advance written testimony is to be used, each party shall serve copies of its proposed written testimony on every other party at least fifteen (15) days in advance of the session of the hearing at which its testimony is to be presented. The presiding officer may permit the introduction of written testimony not so served, either with the consent of all parties present or after they have had a reasonable opportunity to examine it. Written testimony must be offered and admitted in evidence as an exhibit or, in the discretion of the presiding officer, may be incorporated into the transcript of the record as if read.

\* \* \* \* \*



(h) *Exhibits*. Exhibits must be marked in accordance with any instructions provided by the presiding officer. Exhibits must be filed through the agency's E-Filing system, unless the presiding officer grants an exemption permitting an alternative filing method under § 2.302(h)(1) or (2) or unless the filing falls within the scope of § 2.302(g)(2) or (3) as not being subject to electronic transmission. When an exhibit is not filed through the E-Filing system, a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate. Information that a party references through hyperlinks in an exhibit must be submitted by that party, in its entirety, either as part of the exhibit or as a separate exhibit, for that information to be included in the evidentiary record.

\* \* \* \* \*

11. Revise § 2.1200 to read as follows:

**§ 2.1200 Scope of this subpart.**

The provisions of this subpart, together with subpart C of this part, govern all adjudicatory proceedings conducted for the grant, renewal, licensee-initiated amendment, or termination of licenses or permits subject to parts 30, 32 through 36, 39, 40, 50, 52, 54, 55, 61, 70, and 72 of this chapter, except as determined through the application of § 2.310(b) through (h).

**§ 2.1213 [Amended]**

12. In § 2.1213, amend paragraph (a) by removing the phrase "five (5) days" and adding in its place the phrase "seven (7) days".

13. Revise § 2.1400 to read as follows:

**§ 2.1400 Purpose and scope of this subpart.**

The purpose of this subpart is to provide simplified procedures for the expeditious resolution of disputes among parties in an informal hearing process. The provisions of this subpart, together with subpart C of this part, govern adjudicatory proceedings that the Commission, the presiding officer, or the Atomic Safety and

Licensing Board designated to rule on the request/petition determine will be conducted under this subpart in accordance with § 2.310.

Dated: August 1, 2024.

For the Nuclear Regulatory Commission.

***/RA/***

Mirela Gavrilas,  
Executive Director for Operations.