

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.

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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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 13 and 110

3150 - RIN AH74

Use of Electronic Submissions in Agency Hearings

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require the use of electronic submissions in all agency hearings, consistent with the existing practice for the high-level radioactive waste repository application (which is covered under a separate set of regulations). The amendments require the electronic transmission of electronic documents in submissions made to the NRC's adjudicatory boards. Although exceptions to these requirements are established to allow paper filings in limited circumstances, the NRC maintains a strong preference for fully electronic filing and service. The rule builds upon prior NRC rules and developments in the Federal courts regarding the use of electronic submissions.

EFFECTIVE DATE: This final rule will become effective October 1, 2007, and will apply only to new proceedings noticed on or after that date. For any proceeding noticed before that effective date, filings may be submitted via the E-Filing system, but only after this rule's effective date and upon agreement of all participants and the presiding officer.

ADDRESSES: This final rule and any related documents are available on the NRC's interactive rulemaking website at <http://ruleforum.llnl.gov>. For information about the interactive rulemaking site, contact Carol Gallagher, telephone (301) 415-5905, email CAG@nrc.gov. Publicly available NRC documents related to this final rule can also be viewed on public computers located at the NRC's Public Document Room (PDR), located at O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will make copies of documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room currently located at <http://www.nrc.gov/reading-rm/adams.html>.

From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1(800) 397-4209, (301) 415-4737, or by e-mail at pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Darani Reddick, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3841, email dmr1@nrc.gov, or Steven Hamrick, Office of the General Counsel, telephone (301) 415-4106, email sch1@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Overview of the Final Rule.
- III. Comments on the Proposed Rule.
- IV. Section-by-Section Analysis of Substantive Changes.
- V. Voluntary Consensus Standards.
- VI. Environmental Impact: Categorical Exclusion.
- VII. Paperwork Reduction Act Statement.
- VIII. Regulatory Analysis.
- IX. Regulatory Flexibility Certification.
- X. Backfit Analysis.
- XI. Congressional Review Act.

I. Background

On December 16, 2005 (70 FR 74950), the NRC published a proposed rule, E-Filing, to require that submissions in any adjudicatory hearing governed by 10 CFR Part 2, Subpart C or Part 13 be made electronically, and to make electronic filing an option for hearings governed by Part 110. NRC's Electronic Information Exchange (EIE), a component of the E-Filing system, permits users to make electronic submissions to the agency in a secure manner using digital signature technology to authenticate documents and validate the identity of the person submitting the information. Upon receipt of a transmission, the E-Filing system time-stamps documents transmitted to the NRC and sends the submitter an e-mail notice confirming receipt of the documents.

In crafting the rule, the NRC relied upon its past experience with electronic submissions and also examined Federal court practices. These experiences are derived from the "Electronic Maintenance and Submission of Information" final rule ("E-Rule"), issued October 10, 2003 (68 FR 58792), and the 10 CFR Part 2, Subpart J procedures for electronic filing in high-level waste proceedings. The NRC also looked to the use of electronic filing by Federal courts. E-Filing adopts some technical and procedural provisions nearly verbatim from the E-Rule, 10 CFR Part 2, Subpart J, and the procedures adopted by the Federal courts.

The E-Filing rule is accompanied by *Guidance for Electronic Submissions to the NRC* (Guidance), a guidance document that is currently available at <http://www.nrc.gov/site-help/e-submittals.html>. This guidance document consolidates previous guidance set forth for electronic submittal of information to the agency, and sets forth the technical standards for electronic transmission and for formatting electronic documents as well as instructions on how to obtain and use the agency-provided digital identification (ID) certificate that a participant must have to submit or retrieve an electronic filing through the E-Filing system. These standards have not been included in the rule so that it will be easier and faster for the NRC to

amend the Guidance, when warranted, to allow use of the most current technology. Information on accessing and using the E-Filing system is also available on the NRC website, <http://www.nrc.gov>.

II. Overview of the Final Rule

E-Filing represents a major revision to the NRC's methods of filing and service in adjudicatory proceedings governed by the Part 2, Subpart C and Part 13 requirements, and a minor revision to Part 110 requirements. The final rule is generally explained in section III of this document; section IV provides a section-by-section analysis of changes made from the proposed rule to the final rule. A thorough explanation of the concepts involved in E-Filing can be found in the proposed E-Filing rule (70 FR 74950; Dec. 16, 2005).

A. Conceptual Framework for Electronic Filing and Service

Filing and service involve the transfer of a document from one participant to the presiding officer, the other participants in the proceeding, and the Secretary of the Commission for inclusion in the official proceeding docket. Two types of electronic filing and service exist under E-Filing: fully electronic and partially electronic. Fully electronic filing and service involves the electronic transmission of an electronic document. Partially electronic filing and service entails the physical delivery or mailing of optical storage media (OSM) (such as a CD-ROM) containing an electronic document. While E-Filing permits partially electronic filing and service in cases where necessary, the rule generally calls for fully electronic filing (with certain exceptions permitted by the rule and further described in the Guidance).

B. Benefits of Electronic Filing and Service

The benefits of electronic filing and service originate from the use of electronic transmission and electronic documents. The electronic transmission of documents is more cost effective and faster than physical delivery of paper mail. While the added cost and delay of

physically delivering or mailing one document may be small, the total cost and delay could be significant over the course of a proceeding with many filings and a large service list.

In addition, compared to paper documents, electronic documents save resources and increase efficiency. Electronic documents are less expensive to produce, store, transport, and retrieve than paper documents. Electronic documents also have text-searching capability, which allows users to review many documents quickly and find those sections that are relevant to their needs, along with text-capture capability, which enables users to transport entire passages from one document to another quickly. Finally, the filing of electronic documents in the appropriate and uniform format benefits the NRC because the agency already processes filings into electronic formats for storage as official agency records.

C. The E-Filing System

Under E-Filing, a participant wishing to file a document is required to convert the document into the appropriate electronic format and electronically transmit it via the agency's EIE to an electronic system monitored by the NRC, called the E-Filing system. The NRC established the E-Filing system, which can be accessed on the NRC's public E-Submittal website at <http://www.nrc.gov/site-help/e-submittals.html>. The system receives, stores, and distributes documents filed in proceedings covered by this final rule for which an electronic hearing docket has been established.

To electronically submit a filing, a participant with an agency-provided digital certificate completes the Adjudicatory Document Submittal form on the E-Submittal system web page and selects the appropriate proceeding docket from a provided drop-down list, which lists all dockets in which that person is a participant. In the case of all initial petitions to intervene or requests for hearings, the potential submitter will follow the instructions in the Notice of Opportunity for Hearing for the proposed licensing activity or as stated on the NRC web page for obtaining a digital certificate. In essence, the stated process will require the potential

submitter of an initial document in a proceeding to contact the NRC Office of the Secretary and obtain authorization to apply for a digital certificate. At that time, the initial filing submitter must identify for the Office of the Secretary the matter in which it wants to file an intervention petition or hearing request, including the licensing docket involved and the Federal Register notice, if any, that provides an opportunity for hearing. Once the Office of the Secretary is contacted and authorizes obtaining a digital certificate, the Office of the Secretary will establish a docket to receive the intervention petition or other initial filing and any responses thereto filed using the E-Submittal form. If an initial filing submitter already has a digital ID certificate, he or she must still contact the Office of the Secretary so that it can establish a docket to receive the initial filing. Upon being authorized to obtain a digital certificate, the first time submitter, following the procedures on the E-Submittal website, will then select the appropriate docket for filing the submission. The Office of the Secretary will also establish a service list that will include those who are identified for service in the Notice of Opportunity for a Hearing.

Thereafter, the participant attaches, signs using the agency-provided digital ID certificate, and transmits the document. For a filing submitted under an order of the presiding officer that prevents the disclosure of certain information except to certain individuals -- a protective order -- the submitter selects the participants to be served electronically from the electronic distribution list, which is a list of the Atomic Safety and Licensing Board members and other individuals involved in the proceeding as participants or party representatives. For a public filing, the submitter may view the list of participants to be served electronically, but cannot alter the list. The transmission process can be performed either by the participant signing the document or another authorized individual, such as a secretary or clerk.

The E-Filing system thereafter serves all the persons selected by the submitter (or pre-selected in the case of a public filing) to receive service by sending an e-mail notifying them that a document has been filed and providing them with a temporary link from which they can view

and save the document until it is made permanently available through the Publicly Available Record System (PARS) or the Electronic Hearing Docket (EHD). This e-mail constitutes service of the document upon the participants to whom it was sent. Finally, the E-Filing system will send an electronic acknowledgment to the filer, which is an e-mail that confirms receipt of the filing and reports that an e-mail has been sent to the selected persons on the electronic distribution list.

A person filing electronically may seek assistance through the “Contact Us” link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available during normal business hours. The help line number is 1 (800) 397-4209 or locally, (301) 415-4737.

D. Electronic Hearing Dockets

The EHD is a database that houses a visual presentation of the docket for a particular proceeding and a link to all the filings in that proceeding. The EHD can be accessed through the “Electronic Reading Room” link on the NRC homepage. After an electronic docket has been established, the Secretary will inform the participants of the docket’s existence. The Secretary will maintain that docket and all publicly available filings will be accessible from the electronic hearing docket site.

Although the electronic hearing docket established by the Secretary of the Commission after the initial intervention petition or hearing request will bear the licensing docket number under which the proceeding was designated in the Federal Register notice, after a presiding officer is assigned to the proceeding, the Secretary will replace the licensing docket number with a proceeding docket number. The proceeding docket number will be exactly the same numerical digits as the licensing docket number, except that a two or three letter suffix is added to differentiate between multiple hearings involving the same facility. The Secretary will inform the participants of the modified proceeding docket number and will instruct them to use the

proceeding docket number rather than the licensing docket number when accessing documents.

E. Digital ID Certificates

To access the E-Filing system, a participant must obtain a digital ID certificate from the NRC, which will be supplied at no cost. A digital ID certificate is a unique file downloaded onto a participant's computer that identifies the participant to the E-Filing system. A digital ID verifies the participant's identity for the E-Filing system when making an electronic filing, and enables the participant to digitally sign documents submitted to the system. Digital ID certificates are linked to the e-mail address submitted by the individual when applying for a certificate. Therefore, if a participant changes his/her e-mail address, he/she must apply for a new certificate.

A participant must request a digital ID certificate from the NRC before submitting its first electronic filing with the NRC. If the participant is an organization, the digital ID is assigned to a participant representative, rather than the organization. The notices of opportunity for hearing that the NRC publishes in the Federal Register will remind potential participants of the requirement to obtain a digital ID certificate. After contacting the Office of the Secretary to obtain authorization for a digital ID, a participant should apply for a digital ID on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>. A participant will be able to seek assistance in obtaining a digital ID certificate through the "Contact Us" link on the "Electronic Submittals" page located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or through the NRC technical help line. After a digital ID certificate is assigned, that ID will provide the participant with access to all the E-Filing proceedings to which it is a participant; therefore, only one digital ID certificate with the appropriate level of access certification is required per participant regardless of the number of proceedings in which that participant is involved. The NRC reserves the right to revoke a digital ID certificate if it is being abused. An

individual or organization who anticipates participation in NRC proceedings is encouraged to request a digital ID certificate prior to publication of a notice of opportunity for hearing.

In addition to digital ID certificates assigned to individuals, Group digital ID certificates may be assigned to firms or other organizations. Group digital ID certificates, which can be downloaded onto several computers, allow multiple individuals who do not have an individual digital ID certificate to be served with a filing to the E-Filing system, thus permitting those individuals to retrieve documents filed in the proceeding. Because Group digital ID certificates are assigned to entities, the Group digital ID certificate does not have an electronic signature associated with it and, thus, cannot be used to electronically sign filings submitted to the E-Filing system. Thus, at least one representative of the group must obtain an individual digital ID certificate to be able to file electronically. Further, group digital ID certificates cannot be used to receive filings subject to a protective order because only those who have signed a non-disclosure agreement will receive such filings. Participants or their representatives who have signed non-disclosure agreements must obtain individual digital ID certificates to be served with filings subject to a protective order.

F. Electronic Distribution List

Each proceeding with an electronic docket will have a distribution (electronic service) list, which includes the presiding officer, as well as all of the participants (such as the intervenor(s), applicant/licensee, interested government participant(s), and NRC staff) taking part electronically in that specific proceeding. Upon receiving an initial filing from a participant, the Secretary will add the participant to the electronic distribution list, thereby providing the participant notification of and access to documents that will be filed in the proceeding and enabling the participant to electronically file and serve the presiding officer and others on the

distribution list. Participants may retrieve documents filed more than 14 days previously from the EHD website.

G. Certificates of Service and Service List

E-filing requires that submitters attach a certificate of service, including a service list, to their filings to inform the recipients of the entities who received the filing and how they were served. This procedure is particularly important for protective order filings because the E-Filing system will not automatically select a list of the entities to receive the filing. That responsibility will be left to the submitter to perform pursuant to the requirements of the protective order governing filings and restrictions therein to service of protected filings on recipients identified in the order or related disclosure agreements. Also, the electronic distribution list may not be an all-inclusive list of the participants in the proceeding because it will not include any participants permitted to file and be served by paper.

H. Signatures

10 CFR Part 2, Section 2.304 (d) provides that all electronic documents must be signed with the assigned digital ID certificate of a participant or a participant's representative or attorney. It also allows for additional signatures by participant representatives or attorneys using a typed designation, as discussed below. The document, however, does not need to be electronically signed and electronically submitted by the same person with the same digital ID certificate. For example, an attorney or participant's representative may electronically sign a document using his or her digital ID certificate, but a secretary may submit the document, using his or her own digital ID certificate.

The Commission considers documents that have been electronically signed following the procedures outlined below to be the equivalent of traditional signed paper documents. To sign a filing with a digital ID certificate, § 2.304 (d)(1)(i) requires that a signature block be added to the electronic document before it is submitted. The signature block will consist of the phrase

“Signed (electronically) by,” followed by the signer’s name and the capacity in which the person is signing. It will also contain the date of signature and the signer’s postal address, phone number, and e-mail address. The participant will not need to sign a paper document. The digital signature will be added at the time of submittal to the E-Filing system by the participant clicking on the “Click to Digitally Sign Documents” button.

If additional signatures are added to an electronic document, such signatures must be added using a typed “Executed in Accord with 10 CFR § 2.304(d)” designation. To execute a pleading or other submitted document with a typed-in “Executed in Accord with 10 CFR § 2.304(d)” designation, the participant would add a signature block, as described above, for the additional signatories and type in the phrase “Executed in Accord with 10 CFR § 2.304 (d)” on the signature line of the signature blocks for each added signer. As section 2.304 (d)(1) indicates, a person executing a pleading or other similar document submitted by a participant using this designation is making a representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. The Commission also considers documents that have been signed following this procedure to be the equivalent of traditional signed paper documents. Therefore, in a change from the proposed rule, the Commission will not require participants to retain paper copies of handwritten signatures. The NRC staff could also use this method for providing additional signatures, but would type in “/RA/,” meaning “Record Approved,” which is the agency’s current method of signing digitally stored documents.

Documents signed under oath or affirmation, such as affidavits, should be executed in the form specified in 28 U.S.C. § 1746 and signed with the “Executed in Accord with 10 CFR § 2.304 (d)” designation as well, which § 2.304 (d) now would specify is, in accord with 28 U.S.C. § 1746, a representation that, under penalty of perjury, the document is true and

correct to the best of that individual's knowledge and belief. The guidance document provides further explanation of signing documents under oath or affirmation.

I. Electronic Transmission

Under E-Filing, participants will convert their documents into the appropriate electronic formats detailed by the Guidance and electronically transmit these documents to the presiding officer, the other participants, and the Secretary of the Commission. The Guidance sets technical standards for filing and service under the rule and defines the file sizes and formats for electronic transmissions. By putting the technical provisions in the Guidance, the Commission is able to update the electronic transmission standards to keep pace with technology and the changing needs of the NRC and the participants in its adjudication without additional rulemaking. Exemptions to the electronic transmission requirement are discussed below. (See section II.K. of this document).

J. Electronic Document Requirements

Because the E-Filing system can accept documents only in specified electronic formats, E-Filing has specific electronic document standards that are enumerated in the *Guidance for Electronic Submissions to the NRC* ("Guidance"), which is available on the NRC website, <http://www.nrc.gov>. This guidance document replaces all previous agency guidance on electronic submittals to the agency, including *Appendix A: Guidance for Electronic Submissions to the Commission* (which accompanied the E-Rule), *Guidance for Submission of Electronic Documents Under 10 CFR Part 2, Subpart J* (which applies to the high-level waste repository proceeding), and the *E-Filing/E-Submittal Proposed Guidance*. For the foreseeable future, the only acceptable formats are certain types of portable document format (PDF) file formats. In addition, individual submissions cannot exceed 50 megabytes (approximately 5000 pages of

text), which the NRC considers the current upper limit for practical Internet transmissions.

The Guidance creates three categories of documents: simple, large, and complex. Simple documents are documents filed in an acceptable PDF format and transmittable to the E-Filing system in a single transmission.

Large documents, meaning documents exceeding 50 megabytes, are also filed in an acceptable PDF format. The Guidance currently recommends that these large documents should be segmented into smaller files that meet the 50 megabyte limit and then transmitted to the E-Filing system, which reunites the files as a package. Document size limits provided in the Guidance are subject to change, to keep pace with the most current technology. Participants are also asked to physically deliver to all the participants in the proceeding OSMs containing the large document, in its entirety, in a unified form that could be used as a reference copy.

Complex documents are those that (1) are not entirely in an acceptable PDF format; (2) contain Classified National Security Information or Safeguards Information; or (3) exceed the 50 megabyte limit and cannot be segmented. The Guidance asks participants to electronically submit to the E-Filing system the sections of a complex document that are in PDF, do not contain Classified National Security Information or Safeguards Information, and can be segmented into less than 50 megabytes. The Guidance also asks participants to deliver the entire complex document on an OSM to all authorized participants in the proceeding.

As was previously noted, the Guidance considers only certain forms of PDF as qualifying formats. In choosing PDF over other formats, the NRC considered whether:

- (1) the document format is of a type that can be entered as an official agency record;
- (2) the format behaves consistently over a broad range of operating systems and platforms (meaning pagination remains identical regardless of the printer used);
- (3) the format can be easily accessed by most users;
- (4) the format is one to which other document formats can be easily converted;

(5) the format supports images, text, and other types of documentary material that can be useful in a hearings context; and

(6) the format had text-searching and text-capture capabilities.

PDF has all of these features. Further, the National Archives has identified certain PDF versions as acceptable for transfer of permanent records to the archives.

K. Exemptions From the Electronic Filing and Service Requirements

In recent years, almost all participants in NRC adjudications have been filing and serving documents via e-mail in addition to submitting paper copies, which are generally regarded as the “official” versions of the documents. This use of e-mail submissions exists because a vast majority of the participants in NRC proceedings have ready access to computers, word-processing programs, and the Internet. This has led the NRC to conclude that almost all participants are ready to take the next step and move to a fully electronic environment. The NRC recognizes that implementing a rule governing electronic submission could entail initial costs for some persons because participants would need ready access to a computer with word-processing software, software that will save/render documents in PDF format, and the Internet. However, the participants are expected to recoup these expenses through cost savings in labor, copying, and mailing paper documents to multiple participants.

1) Good Cause Required For Exemption From Electronic Filing

Despite these advantages, the NRC recognizes that some individuals may conclude that they are not able to file electronically for a variety of reasons. The NRC, therefore, will allow exemptions from the E-Filing rule for certain participants in appropriate circumstances. To participate using traditional paper filing and service, a participant must request an exemption from the electronic filing requirement and should submit a request for authorization from the presiding officer with its first filing in the proceeding. “Good cause” for such an exemption

would depend on the participant's circumstances and could include such matters as: disability, lack of readily-available Internet access, or the cost of purchasing the necessary equipment or software. The presiding officer will determine if a participant has demonstrated good cause on a case-by-case basis.

If, after submitting its first filing electronically, a participant wishes to request an exemption, the participant will, in addition to the requisite showing of good cause, have to show that granting the exemption late is in the interest of fairness. A participant may meet this standard by demonstrating an unforeseen change in circumstances that makes filing via the E-Filing system especially onerous. Until the presiding officer rules on the request, the participant must continue to file electronically.

E-Filing provides exemptions from the requirement to send the filing to the E-Filing system electronically as well as from the requirement to submit documents in computer file format. These are discussed below.

2) Electronic Transmission Exemption

A participant willing to submit a document formatted in PDF, but capable only of delivering the PDF document via OSM, can request an exemption from electronic transmission over the Internet to the E-Filing system. This participant's filings would be exempt from the requirement of being sent to the E-Filing system.

3) Electronic Document Exemption

A participant can also request an exemption from the requirement to file documents formatted in PDF as well as the electronic transmission requirement through the E-Filing system. This participant would physically file and serve paper documents on the presiding officer and other participants in a manner determined by the presiding officer. In return, the presiding officer, other participants and the Secretary of the Commission would physically serve paper documents on a participant who has been granted this exemption.

Although these exemptions are available for participants in NRC proceedings, the NRC believes that the cost savings from electronic filing generally will exceed electronic filing associated equipment/software/Internet access procurement costs and, thus, encourages potential participants to move to electronic filing and service, whenever possible, rather than seeking an exemption. When a participant is granted either a document exemption or a transmission exemption, E-Filing permits a mixed service proceeding, which is discussed in the next section.

L. Mixed Service Proceedings and Computation of Time

The Commission recognizes the possibility that there could be a proceeding in which a participant will receive an exemption permitting the participant to file and serve paper copies, while the other participants will file and serve documents electronically. As mentioned previously, if an exemption from electronic filing and formatting is granted, the NRC prefers mixed service proceedings to traditional proceedings that rely solely on paper. Mixed service proceedings are those in which some, but not all, of the participants file and serve by the same non-electronic method. For example, rather than requiring that all participants physically serve and file paper documents when one participant to the proceeding is granted an electronic documents exemption, mixed service proceedings allow the exempted participant to file, serve, and be served physically, while the rest of the participants file and serve each other electronically according to the standards in the Guidance. Standards concerning timeliness and the number of days for service will be established by the presiding officer who grants the electronic filing exemption on a case-by-case basis as fairness and efficiency considerations dictate. However, § 2.306(c) specifies that documents served in person or by expedited mail must be served by 5:00 p.m. Eastern Time and a document served through the E-Filing system must be served by 11:59 p.m. Eastern Time.

M. Completeness of Electronic Filings

Under § 2.302 (d)(1), filing by electronic transmission is considered complete “when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically.” For electronic transmissions, the “last act” would occur when the participant hits the “submit/transmission” or “send” button. The language in § 2.302(d)(1) and the meaning of “last act” are taken from the Advisory Committee Notes to the 2002 amendments to Rule 25(c)(4) of the Federal Rules of Appellate Procedure, which covers service requirements. The NRC adopted the “last act” standard for several reasons. First, the “last act” standard, which penalizes a party only for events within its control, is fair. Upon selecting the send or transmit button, a participant relinquishes all control over a document and cannot be certain when the document will be received by the NRC’s system. Making completeness of filing dependent upon receipt of the transmission would subject participants to the vagaries of electronic transmission, which may include such problems as the filer’s Internet connection being slower on the day of filing, the filer’s Internet service disconnecting during transmission, or the filer’s connection to the E-Filing system server failing to connect because the allotted time for connection expired.

Second, the “last act” standard conceptually coincides with the standard for filing by mail, when a filing is considered complete upon depositing the document, in its entirety, in a mailbox. In effect, the “last act” of depositing the document in the mailbox is equivalent to hitting the “submit/transmission” or “send” button.

N. Completeness of Filing When Multiple Filing Methods Are Required

When two or more methods of filing are permitted in a mixed proceeding, § 2.302 (d)(4) indicates that filing is complete when all the methods of filing used are complete. For example, if a participant needs to make a filing consisting of three electronic documents, one of which is entirely Classified National Security Information, the filer is to submit the two non-classified documents by electronic transfer and all three documents on an OSM. If the

participant mails the OSM on Monday and performs the electronic transfer on Tuesday, filing would be complete Tuesday. Although the OSM mailed Monday would contain the entire filing, a filing would not be complete until all required filing methods have been completed.

O. Retrieving Documents Filed in a Proceeding

Upon receiving an electronic filing, the E-Filing system will send an e-mail notification to all persons on the electronic distribution list. The e-mail will notify those on the list that a filing has been made in the proceeding and will provide a link to the document that will stay active for 14 days. Each person with access via an individual or Group digital ID certificate can click on the link to access the document for viewing and/or saving in PDF compatible software and can save the document to his or her own computer. Thereafter, to re-open the document, the person need only access it from his or her own computer. Alternatively, once it is processed into the agency's ADAMS system (usually within 72 hours of submission), a person can access a publicly available document by logging onto the EHD located in the Electronic Reading Room, which is available at <http://www.nrc.gov/reading-rm.html>. The EHD is a publicly available website; no digital ID certificate is required to retrieve documents from the EHD. A link to the EHD will be available on the NRC website.

P. Effective Date of the Rule

This rule will become effective on October 1, 2007. Although this rule is legally applicable only to proceedings noticed after October 1, 2007, ongoing proceedings may opt to follow the rule upon agreement of all participants and the presiding officer, but may submit documents via the E-Filing system only after the effective date of this rule. The NRC encourages participants in ongoing proceedings to do so.

III. Comments on the Proposed Rule

The NRC held a public meeting on January 10, 2006, to discuss and receive comments

on the proposed rule and to demonstrate electronic filings. The NRC also received written comments on the proposed E-Filing rule, which were due to the agency by March 1, 2006. The NRC received comments on various areas of the proposed rule, including comments on technical aspects of electronic filing contained in the proposed E-Filing Guidance. The following summarizes the comments either verbalized at the public meeting or submitted to the NRC in writing and the agency's responses. Suggested editorial changes have been reflected in the final rule and are not individually responded to below. No commenter opposed the proposal to require electronic filing or asserted that they would seek an exemption from the presiding officer if they were seeking to participate in a proceeding in which the rule was applicable.

A. Comments on the Proposed E-Filing Process

Comment. Is the E-Filing rule satisfied when a participant files by attaching the document to electronic mail?

Response. No. The rule requires that filings in adjudicatory proceedings must be submitted by attaching a document to the Adjudicatory Docket Submission Form on the E-Submittal web page. Therefore, a document attached to an e-mail will not be accepted as a properly submitted filing unless otherwise provided by order of the presiding officer.

Comment. What exactly is being certified when the certificate of service is submitted to the E-Filing system? Is there a way to verify that the filing will be served on the people on the service list?

Response. Certifying an electronic certificate of service has the same effect as certifying a paper copy certificate of service. The E-Filing system automatically generates the service list for particular proceedings and allows the participant to review the service list before submitting a filing. For public filings, participants will be able to review the service list but not

change those people designated to be served with the filing. For filings subject to a protective order, participants can review the service list and must designate those who should be served with the filing. In either instance, however, as noted previously, a service list identical to the traditional paper service list (i.e., listing those persons or entities served) should also be included as part of the electronic filing or submission.

Comment. When attaching declarations or affidavits signed under oath and affirmation to a filing, must the person signing the affidavit also electronically sign the filing?

Response. No. An oath or affirmation document should conclude with a statement to this effect:

I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].
As the Guidance indicates, because the E-Filing system only accommodates execution by one digital signatory, for an affiant whose declaration is included with a pleading or other document submitted by a participant, participant representative, or counsel, “Executed in Accord with 10 CFR § 2.304 (d)” would be typed on the signature line of the signature block of the oath or affirmation document to be electronically submitted. Execution of an oath or affirmation document in this manner will be considered the equivalent of a traditional signed copy.

Comment. Will there be a help desk to answer questions on E-Filings?

Response. Yes, assistance will be available through the “Contact Us” link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling NRC technical support, which is available during normal business hours. The help line number is 1 (800) 397-4209 or locally, (301) 415-4737.

Comment. Does the E-filing rule contain provisions for filing proprietary information?

Response. Although the rule itself does not address handling of proprietary information for electronic filing, the Guidance accompanying the rule does. The guidance document provides that sensitive information that is not Safeguards or Classified National Security

Information may be filed electronically to the E-Filing system under the system's protective order file regime. Each sensitive document should be clearly marked, and the cover letter should indicate the sensitivity of each document. Once transmitted to the E-Filing system, sensitive documents will be protected by being placed in specific folders in the Electronic Hearing Docket (EHD) that permit access only to those participants who have been authorized to receive and review the sensitive material.

Comment. The Guidance contemplates filing Classified National Security Information on an OSM. However, neither the rule nor the Guidance provides an exemption for paper filing of classified documents. What if the participant submitting the filing has the appropriate security clearance to possess the classified information, but does not have an NRC-approved classified computer system to process the information on electronic media?

Response. The presiding officer in each proceeding will issue an order, as necessary, that will establish the procedures for the preparation, submission, and service of documents containing classified information. Accordingly, participants who cannot provide electronic versions of documents containing classified information should bring this issue to the attention of the presiding officer at the appropriate time.

Comment. How will documents filed under protective order be accessed through the EHD? Once accessed through the EHD, may these documents be printed?

Response. Those seeking to file and access protective order file materials will be required to obtain a digital ID certificate from the agency as specified by the procedures outlined in the Guidance. The EHD will recognize a participant's digital ID certificate as one that may have access to documents filed under protective order. Once in the EHD, a secure login screen will appear only to those who may access documents filed under a particular protective order, prompting the participant to enter a login ID and password. With the exception of NRC employees, who because of their responsibility under NRC regulations not to disclose

proprietary or other sensitive information covered by a protective order generally are not asked to sign non-disclosure agreements required by protective orders, the Office of the Secretary will give the password only to those participants who have signed the non-disclosure agreement required by the protective order in that particular case. After the login ID and password are verified by the EHD system, the participant may access documents filed under the protective order by which that participant has been granted access.

Participants who have been granted an exemption from electronic filing and, therefore, do not have digital certificates, but who have signed a non-disclosure agreement required by a protective order, may be granted access to protective order filings on the EHD on a case-by-case basis in accordance with procedures specified by the protective order. Documents under protective order may be printed from EHD, but must be controlled as specified by the terms of the governing protective order.

Comment. Is there a specified alternative method of filing that should be used if the E-Filing system is unavailable due to technical issues?

Response. Neither the rule nor the guidance document addresses alternative methods for filing if the E-Filing system is unavailable. Instead, the presiding officer in each proceeding will issue an order that specifies a backup method for filing if the E-Filing system is unavailable.

Comment. When changing to a new computer, must the participant re-register for a digital certificate?

Response. Not necessarily. Digital ID certificates can be downloaded and saved on a disk or memory stick so that when switching to a different computer, the participant may import it off of the disk or memory stick onto the new computer. However, digital ID certificates are linked to a participant's e-mail address. If a participant's e-mail address changes, the participant must apply for a new digital certificate.

Comment. What is the need for group digital ID certificates, and how would individuals

belonging to a group ID be notified of a filing by the E-Filing system?

Response. Group IDs may be assigned to law firms or other organizations and can be downloaded onto several computers. This allows multiple individuals who do not have an individual digital ID certificate to be served with a filing to the E-Filing system and permits those individuals to retrieve documents filed in the proceeding. Notification of the filing would be sent to the e-mail address associated with the Group ID, which generally would be a central mailbox that the individuals belonging to the Group ID would be able to access.

Comment. Proposed § 2.306(b)(3) would give additional time to all participants in a proceeding when multiple service methods are used. The additional time would be computed based on the service method used to deliver the entire document. There could be a circumstance where not all participants receive the “entire” document. For example, if part of the document is proprietary information under protective order and is filed on a CD-ROM, a participant who has not signed the protective order would not be served with that CD-ROM; thus, the participant would not receive the “entire” document.

Response. Given that the participant who has not signed the protective order is not entitled to see the proprietary information, it is not clear why, for service purposes, this participant has not received the “entire” document once a version containing all the nonproprietary portions of the document has been provided (if such a version can be provided appropriately). In any event, the agency believes that this scenario would be a rare occurrence. Therefore, the presiding officer will have discretion to set forth, on a case-by-case basis, the calculation of additional time when a participant may not be entitled to receive an entire filing served by multiple methods. This section of the final rule has been revised to provide for this possibility.

Comment. Section 2.306(b)(5) of the proposed rule would add a day to the response time for a document hand-delivered after 5:00 p.m. but not for a document served by the

E-Filing system at midnight. The same additional day should be provided for any responses hand-served or served by the E-Filing system after 5:00 p.m.

Response. The agency has reconsidered the computation of time set forth in §§ 2.306(b)(5), 13.27(c)(5) and 110.90(c)(5) of the proposed rule. The agency has decided that, for fairness and efficiency, the computation of time will begin the following day after the document is served, unless the presiding officer in that proceeding determines otherwise. For example, if a pleading is served on Monday, regardless of the time of day or method of service, the number of days to respond will be calculated beginning on Tuesday. Sections 2.306(c), 13.27(d) and 110.90(d) of the final rule have been revised to eliminate the computation of time method set forth in the proposed rule. This aspect of the final rule also represents a change from current practice, which allows an extra day for documents received electronically after 5:00 p.m.

These sections of the final rule also now specify that if a document is served by the E-Filing system or by electronic mail, it must be served by 11:59 p.m. Eastern Time of the day it is due in order to be considered timely. The reason for this change is that the E-Filing system requires periodic maintenance that is generally scheduled after midnight Eastern Time on weekdays and results in the system being temporarily unavailable. To ensure that electronic submittals are not impacted by these post-midnight maintenance outages, the NRC is mandating an 11:59 p.m. Eastern Time filing deadline. If a document is served in person or by expedited service, the final rule mandates that it must be served by 5:00 p.m. Eastern Time of the day it is due in order to be considered timely.

Comment. Section 2.306(b)(5) of the proposed rule also appears to afford “all participants” an additional day even if only one participant is served by hand delivery after 5:00 p.m. This appears to be impractical because it would be difficult for one participant to know that another participant had been hand-served after 5:00 p.m., thus affording all participants one

additional day.

Response. The final rule has been revised to specify that, to be considered timely, a document must be hand-served by 5:00 p.m. Eastern Time, or served by the E-Filing system by 11:59 p.m. Eastern Time. As discussed above, redesignated § 2.306(c) of the final rule has revised the computation of time method outlined in the proposed rule so that it will begin the day after a document is served. This will eliminate any ambiguity as to whether, depending on the time a document has been served, the participants will be afforded an additional day.

Comment. The proposed rule uses the term “participant” but does not define this term. “Participant” should be defined in § 2.4.

Response. The definition of “Participant” has been added to § 2.4 of the final rule.

Comment. How will the E-Filing rule affect the use of the Digital Document Management System (DDMS) in agency proceedings?

Response. The E-Filing rule will not affect the DDMS. The DDMS is the Atomic Safety and Licensing Board Panel's hearing management support system that combines web-based hearing and document management with electronic evidence presentation, real-time transcription, and digital recording to provide users with continual electronic access to searchable evidentiary material and video transcripts, and a means to present most evidence in an electronic fashion. In the near future, the DDMS will be used by the Pre-License Application Presiding Officer Board high level waste repository licensing proceeding as well as in other proceedings.

B. Comments on the Guidance Document Accompanying the Proposed Rule

Comment. Must electronically-filed documents be in a certain PDF format?

Response. Yes. The Guidance enumerates the specific electronic document standards to be used for electronic filings. Currently, the only acceptable formats are certain types of PDFs and certain other formats used for spreadsheets, when necessary.

Comment. The naming conventions set forth in the Guidance could result in the loss of a file's interactive features. The Guidance should allow exceptions or dual submittals to allow use of the original file naming convention, and should also allow submittal of nested folders because some of the features rely on unchanged relative path files.

Response. The naming conventions in the Guidance are intended to allow the NRC's profiling process to be more efficient because it alerts the agency's Document Processing Center staff to the order in which the electronically submitted files should be arranged. This allows for easier viewing and use because files in a package will already be arranged in the correct sequential order. Therefore, participants should follow the naming conventions in the Guidance. Further, participants should not file dual submissions to the E-Filing system using different file naming conventions. If the NRC naming convention causes the loss of an interactive file feature, the participant should consider providing the necessary participants with, for example, courtesy CD-ROM copies of the document, using the original file naming convention.

Comment. Using an Adobe Acrobat® digital signature allows documents to be internally authenticated. Participants should be allowed to add certain digital security features in order to prevent unwanted changes to a PDF document.

Response. The agency currently rejects and will continue to reject all electronically-submitted files that contain security protections. The NRC must maintain full access and use of the files. Allowing participants to add certain digital security features would impede this function. Participants can rely on the NRC's internal security and archival processes to ensure that the integrity of submitted materials is maintained.

Comment. The proposed guidance indicates no preference for the auto-rotate setting, and should be revised to allow auto-rotate setting of "Collectively by File" or "individually." This would optimize a PDF file for screen viewing in the case when a file contains text pages

oriented in portrait layout and table pages oriented in landscape layout.

Response. The distiller settings for auto-rotate should be set to “off” as reflected in the Guidance. The NRC relies on participants to correctly rotate pages before they are submitted in order to avoid the possibility of errors attributed to the auto-correct function.

IV. Section-by-Section Analysis of Substantive Changes

Significant changes to certain sections in 10 CFR Parts 2, 13, and 110 were explained in detail in the proposed E-Filing rule (see, 70 FR 74950; Dec. 16, 2005). Therefore, the section below will only address changes made following publication of the proposed rule. These changes were made primarily in response to public comments and agency reconsideration.

A. Section 2.302 - Filing of Documents.

When filings are complete

Section 2.302 (d)(1) of the final rule clarifies that the last act to transmit a document electronically means that it is the last act required to transmit the entire document.

B. Section 2.304 - Formal requirements for documents; signatures; acceptance for filing.

1. Signatures

Section 2.304 (d)(1) of the final rule has been revised to change the method for providing additional signatures, that is, signatures other than that of the person who is required to sign electronically using a digital ID certificate. Although the proposed rule included descriptions of signing electronic documents by digital ID certificate and by the “Original signed by” designation, the agency recognized that this provision needed clarification on the appropriate usage of the different signature methods. All electronic documents submitted via the E-Filing system must be electronically signed using a digital ID certificate. The document must include a typed signature block with the phrase “Signed (electronically) by” designating

the individual who signs the document using his or her digital ID certificate. Additional signatures may be added to the document and to any attached affidavit or other similar attachment, which should be executed in accord with the form specified in 28 U.S.C. § 1746, by typing the “Executed in Accord with 10 CFR § 2.304 (d)” designation on the signature line. The Commission considers these typed-in designations to be official signatures under § 2.304 (d)(1), so participants are no longer required to retain paper copies of these additional signatures, in keeping with the paperwork reduction goal of this rule.

2. Pre-filed exhibits and testimony

Currently, when parties submit pre-filed testimony and exhibits electronically via e-mail, they often submit all of these documents as one large file. For optimal use in the agency’s EHD and DDMS, the Office of the Secretary and the Atomic Safety and Licensing Board Panel must then separate the single file into individual files so that the written testimony of each witness/witness panel constitutes one file. The same is true for each of the evidentiary exhibits. Although the presiding officer could issue orders requiring parties to submit these documents as individual files, it is more efficient generically to set forth this requirement in the rules. Therefore, the final rule adds a new paragraph (g) to the end of § 2.304. This provision requires that when written testimony or evidentiary exhibits are filed via the E-Filing system in advance of a hearing, the written testimony of each individual/panel and each exhibit must be submitted as a separate electronic file. This provision does not apply to exhibits filed at earlier stages of a proceeding, such as exhibits attached to a motion, that are not expected to become part of the evidentiary record of the proceeding.

C. Section 2.305 - Service of documents; methods; proof.

Method of service accompanying a filing

Section 2.305 (c)(4)-(5) have been combined in the final rule into § 2.305(c)(4). Proposed § 2.305 (c)(4) would have required a certificate of service to accompany any

document served upon participants. Proposed § 2.305 (c)(5) would have required the certificate of service to state the name and address of persons served, as well as the date and method of service. These requirements remain in the final rule but have been combined into one provision for clarity and brevity.

D. Section 2.306 - Time Computation.

The changes made to § 2.306 of the final rule are threefold.

1. How mixed service proceedings and multiple service methods affect the number of additional days granted for responding to the service of a notice or other document

First, § 2.306 (b)(3) of the final rule gives the presiding officer discretion to set forth the calculation of additional time in the rare circumstance that a participant may not be entitled to receive an entire filing served by multiple methods (e.g., when part of the filing is public and part is encompassed by a protective order to which the participant is not a party). This change is being made in response to a comment on the proposed rule received by the agency, as discussed previously in this document. Second, the agency reconsidered the computation of time set forth in the proposed rule. Section 2.306 (b)(5) has been redesignated as § 2.306 (c) and no longer provides that an extra response day will be added for documents served after a certain time. Under the final rule, the computation of time will begin the following day after a pleading is served with no day added, unless the presiding officer determines otherwise. The agency changed the approach from that in the proposed rule for simplicity and fairness.

2. Timely service

An additional change to this section is in § 2.306 (c) of the final rule, which now sets a specific deadline for timely filings. A document served in person or by expedited service must be served by 5:00 p.m. Eastern Time of the day it is due. This deadline was implied in the proposed rule but not specifically stated, so its applicability has been clarified in the final rule. A

document served by the E-Filing system or by electronic mail must be served by 11:59 p.m. Eastern Time of the day it is due. This change is necessary to accommodate overnight maintenance periods when the E-Filing system will be inoperable.

E. Part 13 - Program Fraud Civil Remedies.

1. § 13.2 Definitions

Revised § 13.2 of the final rule adopts the definitions added to § 2.4.

2. § 13.26 Filing and Service of Papers

Subsection 13.26(a)(6) of the proposed rule regarding signatures has not been adopted because a new § 13.26 (b), which adopts the wording of § 2.304 (d), has been added to the final rule. Subsections 13.26 (b) and (c) of the proposed rule become subsections 13.26 (c) and (d) in the final rule. Subsection 13.26(a)(7) of the proposed rule regarding certificates of service has not been adopted because § 13.26 (c)(4) contains a similar provision. The change to § 13.26 (a)(6) in the final rule [§ 13.26 (a)(8) in the proposed rule] conforms the filing and service requirements of Part 13 to those in § 2.302 (d)(1).

3. § 13.27 Computation of Time

Revised §§ 13.27 (c)(3) and (c)(5) of the final rule adopt the wording of §§ 2.306 (b)(3) and (b)(5).

F. Part 110 - Public Participation Procedures Concerning Export and Import of Nuclear Equipment and Materials License Applications.

1. § 110.89 Filing and service

The changes to § 110.89 allow for, but do not require E-Filing, and provide a reference to sections 2.302 and 2.305 for participants who choose to file electronically. The changes also remove telegraph as a method of service.

2. § 110.90 Computation of time

The changes to § 110.90 of the final rule adopt the wording of § 2.306 (b) for participants who choose to file electronically. The changes also provide a new § 110.90 (d) that conforms to new § 2.306 (c).

3. § 110.103 Acceptance of hearing documents

New subsection 110.103 (c) of the final rule references § 2.304 for participants who choose to file electronically. The previous subsection 110.103(c) has been redesignated § 110.103(d).

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed by voluntary, private sector, consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This rule establishes requirements and standards for the submission of filings to an electronic docket in hearings under 10 CFR Part 2 Subpart C. Through this rulemaking, the agency is implementing the requirement in the Government Paperwork Elimination Act, Pub. L. 105-277 (44 U.S.C. 3504, note), that Federal agencies allow electronic submissions of information where practicable; therefore, this rule does not constitute the establishment of a Government-unique standard as defined in Office of Management and Budget (OMB) Circular A-199 (1998).

VI. Environmental Impact: Categorical Exclusion

This rule amends the filing and service procedures in 10 CFR Part 2, Subpart C and makes conforming changes to other parts of Title 10 and, therefore, qualifies as an action eligible for the categorical exclusion from environmental review under 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has

been prepared for this final rule.

VII. Paperwork Reduction Act Statement

This rule does not contain information collection requirements and, therefore, is not subject to the requirements of 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 rule. The amendments below will neither impose new, nor relax existing, safety requirements and, thus, do not call for the sort of safety/cost analysis described in the agency's regulatory analysis guidelines in NUREG/BR-0058. Further, the NRC is required by the Government Paperwork Elimination Act, Pub. L. 105-277 (44 U.S.C. 3504, note), to allow electronic submissions when practicable. The rule states the requirements for electronic filing and service in NRC adjudicatory proceedings, except those conducted on a high-level radioactive waste repository application. The Commission, while strongly preferring that participants file and serve their documents electronically, nonetheless permits participants to submit paper filings if the participants establish good cause for doing so. Preparation of an analysis of costs and benefits, therefore, would not enhance the NRC's decision-making process.

The NRC believes that this rule reduces the current filing costs of persons who participate in agency adjudications. Currently, most submissions to the Commission are electronically mailed with a conforming paper copy to follow. This rule eliminates the need to mail the paper copy. Because virtually all of the participants in NRC hearings electronically mail filings, they already have most, if not all, of the requisite equipment. Also, the cost of the additional equipment and software is minimal in relation to the savings expected from eliminating the expenses of copying and postage. Although a participant may need to purchase a program that converts documents to PDF format for approximately \$500 each, the savings in

copying and postage costs could be hundreds, if not thousands, of dollars.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605 (b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. It is possible that some poorly funded entities seeking to intervene would be adversely affected by this rule, but their number is likely to be small and the final rules provide for exemptions from the electronic filing requirements for good cause. In this regard, the NRC received no comments raising implementation cost issues. This rule applies in the context of Commission adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do not fall within the definition of a small business found in the Small Business Regulatory Enforcement Fairness Act of 1996, 15 U.S.C. 632, within the small business standards set forth in 13 CFR Part 121, or within the size standards adopted by the NRC (10 CFR 2.810). Based upon the historically low number of requests for hearings involving materials licensees, it is not expected that this rule would have any significant economic impact on a substantial number of small businesses.

X. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule because these amendments modify the procedures to be used in NRC adjudicatory proceedings, and do not involve any provisions that would impose backfits as defined in 10 CFR 50.109, 70.76, 72.62, and 76.76. Therefore, a backfit analysis has not been prepared for this final rule.

XI. Congressional Review Act

The NRC has determined that this is not a major rule under the Congressional Review Act, and the Office of Management and Budget has confirmed this determination.

List of Subjects

10 CFR Part 1

Organization and function (Government agencies).

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.

10 CFR Part 13

Claims, Fraud, Organization and function (Government agencies), Penalties.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

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; the Government Paperwork Elimination Act; and 5 U.S.C. §553; the NRC has adopted the following amendments to 10 CFR Parts 1, 2, 13, and 110.

PART 1 – STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

AUTHORITY: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85-256, 71 Stat. 579, Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553, Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.5, the introductory text of paragraph (a) is revised to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

(a) The principal NRC offices are located in the Washington, DC, area. Facilities for the service of process and documents are maintained in the State of Maryland at 11555 Rockville Pike, Rockville, Maryland 20852-2738. The agency's official mailing address is U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The locations of NRC offices in the Washington, DC, area are as follows:

* * * * *

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

3. The authority citation for Part 2 is revised 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, 2.321 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). 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. 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). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712, also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 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). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-550, 84 Stat. 1473 (42 U.S.C. 2135).

4. Section 2.4 is amended by adding the definitions of Digital ID certificate, Electronic acknowledgment, Electronic Hearing Docket, E-Filing System, Guidance for Electronic Submissions to the NRC, Optical Storage Medium, and Participant in alphabetical order:

§ 2.4 Definitions.

* * * * *

Digital ID certificate means a file stored on a participant's computer that contains the participant's name, e-mail address, and participant's digital signature, proves the participant's identity when filing documents and serving participants electronically through the E-Filing system, and contains public keys, which allow for the encryption and decryption of documents

so that the documents can be securely transferred over the Internet.

* * * * *

Electronic acknowledgment means a communication transmitted electronically from the E-Filing system to the submitter confirming receipt of electronic filing and service.

Electronic Hearing Docket means the publicly available website which houses a visual presentation of the docket and a link to its files.

E-Filing System means an electronic system that receives, stores, and distributes documents filed in proceedings for which an electronic hearing docket has been established.

* * * * *

Guidance for Electronic Submissions to the NRC means the document issued by the Commission that sets forth the transmission methods and formatting standards for filing and service under E-Filing. The document can be obtained by visiting the NRC's website at www.nrc.gov.

* * * * *

Optical Storage Media means any physical computer component that meets E-Filing Guidance standards for storing, saving, and accessing electronic documents.

* * * * *

Participant means an individual or organization that has petitioned to intervene in a proceeding or requested a hearing but that has not yet been granted party status by an Atomic Safety and Licensing Board or other presiding officer. Participant also means a party to a proceeding and any interested State, local governmental body, or affected Federally-recognized Indian Tribe that seeks to participate in a proceeding in accordance with § 2.315(b). For the purpose of service of documents, the NRC staff is considered a participant even if not participating as a party.

* * * * *

5. Section 2.302 is revised to read as follows:

§ 2.302 Filing of Documents.

(a) Documents filed in Commission adjudicatory proceedings subject to this part shall be electronically transmitted through the E-Filing system, unless the Commission or presiding officer grants an exemption permitting an alternative filing method or unless the filing falls within the scope of paragraph (g)(1) of this section.

(b) Upon an order from the Commission or presiding officer permitting alternative filing methods, or as otherwise set forth in Guidance for Electronic Submissions to the NRC, documents may be filed by:

(1) First-class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff; or

(2) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff.

(c) All documents offered for filing must be accompanied by a certificate of service stating the names and addresses of the persons served as well as the manner and date of service.

(d) Filing is considered complete:

(1) By electronic transmission when the filer performs the last act that it must perform to transmit a document, in its entirety, electronically;

(2) By first-class mail as of the time of deposit in the mail;

(3) By courier, express mail, or expedited delivery service upon depositing the document with the provider of the service; or

(4) If a filing must be submitted by two or more methods, such as a filing that the

Guidance for Electronic Submission to the NRC indicates should be transmitted electronically as well as physically delivered or mailed on optical storage media, the filing is complete when all methods of filing have been completed.

(e) For filings by electronic transmission, the filer must make a good faith effort to successfully transmit the entire filing. Notwithstanding paragraph (d) of this section, a filing will not be considered complete if the filer knows or has reason to know that the entire filing has not been successfully transmitted.

(f) Digital ID Certificates.

(1) Through digital ID certificates, the NRC permits participants in the proceeding to access the E-Filing system to file documents, serve other participants, and retrieve documents in the proceeding.

(2) Any participant or participant representative that does not have a digital ID certificate shall 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 a digital ID certificate on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>.

(3) Group ID Certificate. A participant wishing to obtain a digital ID certificate valid for several persons may obtain a group digital ID certificate. A Group ID cannot be used to file documents. The Group ID provides access to the E-Filing system for the individuals specifically identified in the group's application to retrieve documents recently received by the system. The Group ID also enables a group of people, all of whom may not have individual digital ID certificates, to be notified when a filing has been made in a particular proceeding.

(g) Filing Method Requirements.

(1) *Electronic filing.* Unless otherwise provided by order, all filings must be made as electronic submissions in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time.

Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>. If a filing contains sections of information or electronic formats that may not be transmitted electronically for security or other reasons, the portions not containing those sections will be transmitted electronically to the E-Filing system. In addition, optical storage media (OSM) containing the entire filing must be physically delivered or mailed. In such cases, 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.

(2) *Electronic transmission exemption.* Upon a finding of good cause, the Commission or presiding officer can grant an exemption from 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 electronic documents by physically delivering or mailing an OSM containing the documents. A participant granted this exemption would still be required to meet the electronic formatting requirement in paragraph (g)(1) of this section.

(3) *Electronic document exemption.* Upon a finding of good cause, the Commission or presiding officer can exempt a participant from both the electronic (computer file) formatting and electronic transmission requirements in paragraph (g)(1) of this section. A participant granted such an exemption can file 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.

(4) *Requesting an exemption.* A filer seeking an exemption under paragraphs (g)(2) or (g)(3) 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 paragraphs (g)(2) or (g)(3) 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.

6. Section 2.304 is revised to read as follows:

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

(a) *Docket numbers and titles.* Each document filed in an adjudication to which a docket number has been assigned must contain a caption setting forth the docket number and the title of the proceeding and a description of the document (e.g., motion to quash subpoena).

(b) *Paper documents.* In addition to the requirements in this part, paper documents must be stapled or bound on the left side; typewritten, printed, or otherwise reproduced in permanent form on good unglazed paper of standard letterhead size; signed in ink by the participant, its authorized representative, or an attorney having authority with respect to it; and filed with an original and two conforming copies.

(c) *Format.* Each page in a document must begin not less than one inch from the top, with side and bottom margins of not less than one inch. Text must be double-spaced, except that quotations may be single-spaced and indented. The requirements of this paragraph do not apply to original documents, or admissible copies, offered as exhibits, or to specifically prepared exhibits.

(d) *Signatures.* The original of each document must be signed by the participant or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing; his or her address, phone number, and e-mail address; and the date of signature. The signature of a person signing a pleading or other similar document submitted by a participant is a representation that the document has been

subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. The signature of a person signing an affidavit or similar document, which should be submitted in accord with the form outlined in 28 U.S.C. § 1746, is a representation that, under penalty of perjury, the document is true and correct to the best of that individual's knowledge and belief. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be struck.

(1) An electronic document must be signed using a participant's or a participant representative's digital ID certificate. Additional signatures can be added to the electronic document, including to any affidavits that accompany the document, by a typed-in designation that indicates the signer understands and acknowledges that he or she is assenting to the representations in paragraph (d) of this section.

(i) When signing an electronic document using a digital ID certificate, 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 e-mail 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 digital ID certificate signer.

(2) Paper documents must be signed in ink.

(e) *Designation for service.* The first document filed by any participant in a proceeding must designate the name and address of a person on whom service may be made. This document must also designate the e-mail address, if any, of the person on whom service may be made.

(f) *Acceptance for filing.* Any document that fails to conform to the requirements of this section may be refused acceptance for filing by the Secretary or the presiding officer and may be returned with an indication of the reason for nonacceptance. Any document that is not accepted for filing will not be entered on the Commission's docket.

(g) *Pre-filed written testimony and exhibits.* In any instance in which a participant submits electronically through the E-Filing system written testimony or hearing exhibits in advance of a hearing, the written testimony of each individual witness or witness panel and each individual exhibit shall be submitted as an individual electronic file.

7. Section 2.305 is revised to read as follows:

§ 2.305 Service of documents; methods; proof.

(a) *Service of documents by the Commission.* Except for subpoenas, the Commission shall serve all orders, decisions, notices, and other documents to all participants, by the same delivery method those participants use to file and accept service.

(b) *Who may be served.* Any document required to be served upon a participant shall be served upon that person or upon the representative designated by the participant or by law to receive service of documents. When a participant has appeared by attorney, service shall be made upon the attorney of record.

(c) *Method of service accompanying a filing.* Service must be made electronically to the E-Filing system. Upon an order from the Commission or presiding officer permitting alternative filing methods under §2.302 (g)(4), service may be made by personal delivery, courier,

expedited delivery service, or by first-class, express, certified or registered mail. As to each participant that cannot serve electronically, the Commission or presiding officer shall require service by the most expeditious means permitted under this paragraph that are available to the participant, unless the Commission or presiding officer finds that this requirement would impose undue burden or expense on the participant.

(1) Unless otherwise provided in this section, a participant will serve documents on the other participants by the same method by which those participants filed.

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

(3) A participant granted an exemption under § 2.302 (g)(3) will serve the presiding officer and the other participants in the proceeding by physically delivering or mailing a paper copy.

(4) To provide proof of service, any paper served upon participants to the proceeding as may be required by law, rule, or order of the presiding officer must be accompanied by a signed certificate of service stating the names and addresses of the persons served as well as the method and date of service.

(d) *Method of service not accompanying a filing.* Service of demonstrative evidence, e.g., maps and other physical evidence, may be made by first-class mail in all cases, unless the presiding officer directs otherwise or the participant desires to serve by a faster method. In instances when service of a document, such as a discovery document under § 2.336, will not accompany a filing with the agency, the participant may use any reasonable method of service to which the recipient agrees.

(e) *Service on the Secretary.* (1) All motions, briefs, pleadings, and other documents must be served on the Secretary of the Commission by the same or equivalent method, such as

by electronic transmission or first-class mail, that they are served upon the presiding officer, so that the Secretary will receive the filing at approximately the same time that it is received by the presiding officer to which the filing is directed.

(2) When pleadings are personally delivered to a presiding officer conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished electronically to the E-Filing system, as well as by courier, express mail, or expedited delivery service.

(3) Service of demonstrative evidence (e.g., maps and other physical exhibits) on the Secretary of the Commission may be made by first-class mail in all cases, unless the presiding officer directs otherwise or the participant desires to serve by a faster method. All pre-filed testimony and exhibits shall be served on the Secretary of the Commission by the same or equivalent method that it is served upon the presiding officer to the proceedings, i.e., electronically to the E-Filing system, personal delivery or courier, express mail, or expedited delivery service.

(4) The addresses for the Secretary are:

(i) Internet: the E-Filing system at <http://www.nrc.gov>;

(ii) First-class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff; and

(iii) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemakings and Adjudications Staff.

(f) *When service is complete.* Service upon a participant is complete:

(1) By the E-Filing system, when filing electronically to the E-Filing system is considered complete under § 2.302 (d).

(2) By personal delivery, upon handing the document to the person, or leaving it at his or

her office with that person's clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place in the office, or if the office is closed or the person to be served has no office, leaving it at his or her usual place of residence with some person of suitable age and discretion then residing there;

(3) By mail, upon deposit in the United States mail, properly stamped and addressed;

(4) By expedited service, upon depositing the document with the provider of the expedited service; or

(5) When service cannot be effected by a method provided by paragraphs (f)(1)-(4) of this section, by any other method authorized by law.

(6) When two or more methods of service are required, service is considered complete when service by each method is complete under paragraphs (f)(1)-(4) of this section.

(g) *Service on the NRC staff.*

(1) Service shall be made upon the NRC staff of all documents required to be filed with participants and the presiding officer in all proceedings, including those proceedings where the NRC staff informs the presiding officer of its determination not to participate as a party. Service upon the NRC staff shall be by the same or equivalent method as service upon the Office of the Secretary and the presiding officer, e.g., electronically, personal delivery or courier, express mail, or expedited delivery service.

(2) If the NRC staff decides not to participate as a party in a proceeding, it shall, in its notification to the presiding officer and participants of its determination not to participate, designate a person and address for service of documents.

8. Section 2.306 is revised to read as follows:

§ 2.306 Computation of time.

(a) In computing any period of time, the day of the act, event, or default after which the

designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday or Sunday, a Federal legal holiday at the place where the action or event is to occur, or a day upon which, because of an emergency closure of the Federal government in Washington, D.C., NRC Headquarters does not open for business, in which event the period runs until the end of the next day that is not a Saturday, Sunday, Federal legal holiday, or emergency closure.

(b) Whenever a participant has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her, no additional time is added to the prescribed period except in the following circumstances:

(1) If a notice or document is served upon a participant, by first-class mail only, three (3) calendar days will be added to the prescribed period for all the participants in the proceeding.

(2) If a notice or document is served upon a participant, by express mail or other expedited service only, two (2) calendar days will be added to the prescribed period for all the participants in the proceeding.

(3) If a document is to be served by multiple service methods, such as partially electronic and entirely on optical storage media, the additional number of days is computed according to the service method used to deliver the entire document, excluding courtesy copies, to all of the other participants in the proceeding. The presiding officer may determine the calculation of additional days when a participant is not entitled to receive an entire filing served by multiple methods.

(4) In mixed service proceedings when all participants are not using the same filing and service method, the number of days for service will be determined by the presiding officer based on considerations of fairness and efficiency.

(c) To be considered timely, a document must be served:

(1) By 5 p.m. Eastern Time for a document served in person or by expedited service;
and

(2) By 11:59 p.m. Eastern Time for a document served by the E-Filing system.

9. In § 2.346, the introductory text is revised to read as follows:

§ 2.346 Authority of the Secretary.

When briefs, motions or other documents are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary is authorized to:

* * * * *

10. In § 2.390, paragraph (b)(1)(iii) is revised to read as follows:

§ 2.390 Public inspections, exemptions, requests for withholding.

* * * * *

(b) * * *

(1) * * *

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. This statement must address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be

submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate document. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

11. In § 2.808, the introductory text is revised to read as follows:

§ 2.808 Authority of the Secretary to rule on procedural matters.

When briefs, motions or other documents listed herein are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary is authorized to:

* * * * *

PART 13 - PROGRAM FRAUD CIVIL REMEDIES

12. The authority citation for Part 13 is revised to read as follows:

AUTHORITY: Public Law 99-509, secs. 6101-6104, 100 Stat. 1874 (31 U.S.C. 3801-3812); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 13.13 (a) and (b) also issued under section Pub. L. 101-410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note).

13. Section 13.2 is amended by adding the definitions of Digital ID certificate, Electronic acknowledgment, Electronic Hearing Docket, E-Filing System, Guidance for Electronic Submissions to the NRC, Optical Storage Medium, and Participant in alphabetical order:

§ 13.2 Definitions.

* * * * *

Digital ID certificate means a file stored on a participant's computer that contains the participant's name, e-mail address, and participant's digital signature, proves the participant's identity when filing documents and serving participants electronically through the E-Filing system, and contains public keys, which allow for the encryption and decryption of documents so that the documents can be securely transferred over the Internet.

Electronic acknowledgment means a communication transmitted electronically from the E-Filing system to the submitter confirming receipt of electronic filing and service.

Electronic Hearing Docket means the publicly available website which houses a visual presentation of the docket and a link to its files.

E-Filing System means an electronic system that receives, stores, and distributes documents filed in proceedings for which an electronic hearing docket has been established.

* * * * *

Guidance for Electronic Submissions to the NRC means the document issued by the Commission that sets forth the transmission methods and formatting standards for filing and service under E-Filing. The document can be obtained by visiting the NRC's website at www.nrc.gov.

* * * * *

Optical Storage Media means any physical computer component that meets E-Filing Guidance standards for storing, saving, and accessing electronic documents.

Participant means an individual or organization that has petitioned to intervene in a proceeding or requested a hearing but that has not yet been granted party status by an Atomic Safety and Licensing Board or other presiding officer. Participant also means a party to a proceeding and any interested State, local governmental body, or affected Federally-recognized Indian Tribe that seeks to participate in a proceeding in accordance with § 2.315(b). For the

purpose of service of documents, the NRC staff is considered a participant even if not participating as a party.

* * * * *

14. In § 13.9, paragraph (a) is revised to read as follows:

§ 13.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within thirty (30) days of service of the complaint. Service of an answer shall be made by electronically delivering a copy to the reviewing official in accordance with § 13.26. An answer shall be deemed a request for hearing.

* * * * *

15. Section 13.26 is revised to read as follows:

§ 13.26 Filing and service of papers.

(a) *Filing.* (1) Unless otherwise provided by order, all filings must be made as electronic submissions in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions may be found in the E-Filing Guidance and on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>. If a filing contains sections of information or electronic formats that may not be transmitted electronically for security or other reasons, portions not containing those sections will be transmitted electronically to the E-Filing system. In addition, optical storage media (OSM) containing the entire filing must be physically delivered or mailed. In such cases, the submitter does not need to apply to the Commission for an exemption to deviate from the requirements in paragraph (a) of this section.

(2) Electronic transmission exemption. The ALJ may relieve a participant who is filing electronic documents of the transmission requirements in paragraph (a) of this section. Such a

participant will file electronic documents by physically delivering or mailing an OSM containing the documents. The electronic formatting requirement in paragraph (a) of this section must be met.

(3) Electronic document exemption. The ALJ may relieve a participant of both the electronic (computer file) formatting and transmission requirements in paragraph (a)(1) of this section. Such a participant will file paper documents physically or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Filing by mail is complete upon deposit in the mail.

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

(5) Every pleading and document filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the presiding officer, and a designation of the document (e.g., motion to quash subpoena).

(6) Filing is complete when the filer performs the last act that it must perform to submit a document, such as hitting the send/submit/transmit button for an electronic transmission or depositing the document, in its entirety, in a mailbox.

(b) *Signatures*. The original of each document must be signed by the participant or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing; his or her address, phone number, and e-mail address; and the date of signature. The signature of a person signing a pleading or other similar document submitted by a participant is a representation that the document has been

subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. The signature of a person signing an affidavit or similar document, which should be submitted in accord with the form outlined in 28 U.S.C. § 1746, is a representation that, under penalty of perjury, the document is true and correct to the best of that individual's knowledge and belief. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be struck.

(1) An electronic document must be signed using a participant's or a participant representative's digital ID certificate. Additional signatures can be added to the electronic document, including to any affidavits that accompany the document, by a typed-in designation that indicates the signer understands and acknowledges that he or she is assenting to the representations in paragraph (d) of this section.

(i) When signing an electronic document using a digital ID certificate, 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 e-mail 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 digital ID certificate signer.

(2) Paper documents must be signed in ink.

(c) *Service*. A participant filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other participant. Service upon any participant of any document other than those required to be served as prescribed in §13.8 shall be made electronically to the E-Filing system. When a participant is represented by a representative, service shall be made upon such representative in lieu of the actual participant. Upon an order from the ALJ permitting alternative filing methods under paragraphs (a)(2) or (a)(3) of this section, service may be made by physical delivery or mail. As to each participant that cannot serve electronically, the ALJ shall require service by the most expeditious means permitted under this paragraph that are available to the participant, unless the ALJ finds that this requirement would impose undue burden or expense on the participant.

(1) Unless otherwise provided in this paragraph, a participant will serve documents on the other participants by the same method that those participants filed.

(2) A participant granted an exemption under paragraph (a)(2) of this section will serve the participants in the proceeding that filed electronically by physically delivering or mailing an OSM containing the electronic document.

(3) A participant granted an exemption under paragraph (a)(3) will serve the other participants in the proceeding by physically delivering or mailing a paper copy.

(4) A certificate of service stating the names and addresses of the persons served as well as the method and date of service must accompany any paper served upon participants to the proceeding.

(5) Proof of service, which states the name and address of the person served as well as the method and date of service, may be made as required by law, by rule, or by order of the Commission.

16. Section 13.27 is revised to read as follows:

§ 13.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday or Sunday, a Federal legal holiday at the place where the action or event is to occur, or a day on which, because of emergency closure of the federal government in Washington, D.C., NRC Headquarters does not open for business, in which event it includes the next day that is not a Saturday, Sunday, holiday or emergency closure.

(b) When the period of time allowed is less than seven (7) days, intermediate Saturdays, Sundays, Federal legal holidays, and emergency closures shall be excluded from the computation.

(c) Whenever an action is required within a prescribed period by a document served pursuant to § 13.26, no additional time is added to the prescribed period except in the following circumstances:

(1) If a notice or document is served upon a participant, by first-class mail only, three (3) calendar days will be added to the prescribed period for all the participants in the proceeding.

(2) If a notice or document is served upon a participant, by express mail or other expedited service only, two (2) calendar days will be added to the prescribed period for all the participants in the proceeding.

(3) If a document is to be served by multiple service methods, such as partially electronic and entirely on an OSM, the additional number of days is computed according to the service method used to deliver the entire document, excluding courtesy copies, to all of the other participants in the proceeding. The presiding officer may determine the calculation of additional days when a participant is not entitled to receive an entire filing served by multiple

methods.

(4) In mixed service proceedings where all participants are not using the same filing and service method, the number of days for service will be determined by the presiding officer based on considerations of fairness and efficiency. The same number of additional days will be added to the prescribed period for all the participants in the proceeding with the number of days being determined by the slowest method of service being used in the proceeding.

(d) To be considered timely, a document must be served:

(1) By 5 p.m. Eastern Time for a document served in person or by expedited service;

and

(2) By 11:59 p.m. Eastern Time for a document served by the E-Filing system.

PART 110 - EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL.

17. The authority citation for Part 110 continues to read as follows:

AUTHORITY: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 134, 161, 170H., 181, 182, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092-2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154-2158, 2160d., 2201, 2210h., 2231-2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96-92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99-440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80-110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130-110.135 also issued

under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102-496 (42 U.S.C. 2151 et seq.).

18. Section 110.89 is revised to read as follows:

§ 110.89 Filing and service.

(a) Hearing requests, intervention petitions, answers, replies and accompanying documents must be filed with the Commission by delivery or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff or via the E-Filing system, following the procedure set forth in 10 CFR 2.302. Filing by mail is complete upon deposit in the mail. Filing via the E-Filing system is completed by following the requirements described in 10 CFR 2.302(d).

(b) All filing and Commission notices and orders must be served upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Executive Secretary, Department of State, Washington, DC 20520; and participants if any. Hearing requests, intervention petitions, and answers and replies must be served by the person filing those pleadings.

(c) Service is completed by:

(1) Delivering the paper to the person; or leaving it in his office with someone in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if he has no office or it is closed, leaving it at his usual place of residence with some occupant of suitable age and discretion;

(2) Following the requirements for E-Filing in 10 CFR 2.305;

(3) Depositing it in the United States mail, express mail, or expedited delivery service, properly stamped and addressed; or

(4) Any other manner authorized by law, when service cannot be made as provided in paragraphs (c)(1) through (3) of this section.

(d) Proof of service, stating the name and address of the person served and the manner and date of service, shall be shown, and may be made by:

(1) Written acknowledgment of the person served or an authorized representative;

(2) The certificate or affidavit of the person making the service; or

(3) Following the requirements for E-Filing in 10 CFR 2.305.

(e) The Commission may make special provisions for service when circumstances warrant.

19. Section 110.90 is revised to read as follows:

§ 110.90 Computation of time.

(a) In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday or Sunday, a Federal legal holiday at the place where the action or event is to occur, or a day upon which, because of an emergency closure of the Federal government in Washington, D.C., NRC Headquarters does not open for business, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or emergency closure.

(b) In time periods of less than seven (7) days, intermediate Saturdays, Sundays, Federal legal holidays, and emergency closures are not counted.

(c) Whenever an action is required within a prescribed period by a document served under § 110.89 of this part, no additional time is added to the prescribed period except as set forth in 10 CFR 2.306(b).

(d) To be considered timely, a document must be served:

(1) By 5 p.m. Eastern Time for a document served in person or by expedited service;
and

(2) By 11:59 p.m. Eastern Time for a document served by the E-Filing System.

20. Section 110.103 is revised to read as follows:

§ 110.103 Acceptance of hearing documents.

(a) Each document filed or issued must be clearly legible and bear the docket number, license application number and hearing title.

(b) Each document shall be filed in one original and signed by the participant or his authorized representative, with his address and date of signature indicated. The signature is a representation that the document is submitted with full authority, the signer knows its contents and that, to the best of his knowledge, the statements made in it are true.

(c) Filings submitted using the E-filing system must follow the requirements outlined in 10 CFR 2.304.

(d) A document not meeting the requirements of this section may be returned with an explanation for nonacceptance and, if so, will not be docketed.

Dated at Rockville, Maryland,
this ___ day of _____, 2007.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission