



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

July 23, 2002

OFFICE OF THE  
SECRETARY

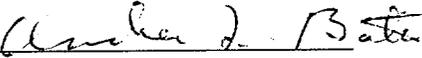
COMMISSION VOTING RECORD

DECISION ITEM: SECY-02-0096

TITLE: DIRECT FINAL RULE ON ELECTRONIC  
MAINTENANCE AND SUBMISSION OF  
INFORMATION

The Commission (with all Commissioners agreeing) approved the subject paper as noted in an Affirmation Session and recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of July 23, 2002.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

  
\_\_\_\_\_  
Andrew L. Bates  
Acting Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-02-0096

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	7/10/02
COMR. DICUS	X					6/13/02
COMR. DIAZ	X				X	7/17/02
COMR. McGAFFIGAN	X				X	7/19/02

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, Commission approved the final rule as noted in an Affirmation Session and reflected in the SRM issued on July 23, 2002.

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook  
Secretary of the Commission

FROM: CHAIRMAN MESERVE

SUBJECT: SECY-02-0096 - DIRECT FINAL RULE ON ELECTRONIC  
MAINTENANCE AND SUBMISSION OF INFORMATION

Approved  X with edits  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:**

The rule seeks to assure compliance with the Government Paperwork Elimination Act (GPEA) with respect to the electronic submission of documents to the NRC. We should anticipate that, over time, many of the submissions to the agency will be in electronic form. I understand, however, that the NRC staff still intends largely to handle these submissions in paper form once they are received. The staff should address the cultural and technical barriers that prevent the staff from using electronic files rather than paper as the means for the conduct of NRC business and should report to the Commission as to its strategy for modernizing the agency's internal business practices.



\_\_\_\_\_  
SIGNATURE

July 10, 2002

\_\_\_\_\_  
DATE

Entered on "AS" Yes  No

As a result of this pilot program, on January 26, 2001, the NRC issued Regulatory Issue Summary (RIS) 2001-05, "Guidance on Submitting Documents to the NRC by Electronic Information Exchange or on CD-ROM," which informs all Part 50 applicants and licensees that they have the option of submitting documents to the NRC over the Internet by the EIE process or on CD-ROM under procedures spelled out in the RIS. The RIS does not cover electronic submissions under regulations other than those in Part 50. However, on August 10, 2001, the agency issued a letter to certain fuel cycle facilities that extends to them the option of electronic submissions in many circumstances.<sup>1</sup> Nonetheless, these two documents do not cover other materials licensees or members of the general public.

### III. Action

This rulemaking expands participation in electronic submissions by affording all licensees, vendors, applicants, and members of the public the option, where practicable, of submitting documents to the NRC in an electronic format, for example on CD-ROM, by e-mail, or through a special Web-based interface such as the NRC's Electronic Information Exchange. Electronic submission of documents to the NRC remains strictly voluntary; paper documents remain an acceptable form of submission.

Under the amendments in this rule, when an electronic submission is made in a medium other than CD-ROM, only one copy need be submitted to meet the requirements of the regulations, and no paper copy need accompany the electronic submission. However, the amendments in this rule will continue to require multiple copies of paper submissions.

Moreover, if a person chooses to submit electronically a document on CD-ROM, the <sup>person must</sup> ~~document~~ <sup>submit the same number of CD-Roms as</sup> ~~document~~ <sup>paper</sup> ~~document~~ <sup>CD-Roms</sup> must be submitted in the number of copies required by the regulations, and the ~~document~~ should be accompanied by one signed paper copy.

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<sup>1</sup>Last fall, the NRC also issued guidance on managing quality assurance records in electronic media. See RIS 2000-18, October 23, 2000, available at the NRC's Web site.

The guidance that is appended to this rule indicates that a signed paper copy must be included with documents submitted on CD-ROM to avoid sharp increases in NRC's reproduction costs. Large documents submitted on CD-ROM typically contain engineering drawings, other graphics, and color, often intermixed with text. Some of the material is oversized and cannot be viewed easily on standard-sized monitors. Moreover, NRC's experience in using existing technology to produce paper copies of CD-ROMs has proven to be labor intensive and cost prohibitive. Individual files on the CD must be identified as to type, printed out on the printers appropriate to each type -- for example, oversize engineering drawings must be printed on specialized equipment -- and then reassembled into one correctly ordered document. Until there is technology that allows the NRC staff to produce paper copies of CDs on a single machine, or view drawings on a large enough screen, it is not practicable for the staff to ~~do without~~ <sup>totally eliminate the need for a</sup> paper copies of submissions on CD-ROM. The paper copy allows the NRC to rapidly produce the number of copies sufficient to conduct its business and to make <sup>the document</sup> available to the public. The NRC believes that having the submitter supply a paper copy is more cost effective because a paper copy can be generated at minimal expense when the document is created, but the paper copy can be generated only at considerable expense when it is produced from another medium through a conversion process. This slight increase in costs for the submitter is at least partially offset by avoiding the increase in the NRC's overhead costs, and thus in the fees charged to licensees and applicants, that would result if the NRC produced paper copies from CD-ROM. <sup>Documents submitted via EIE without special attributes, do not pose the same printing concerns. Thus, paper copies are not required for those documents.</sup>

Documents with special attributes, such as 3D images, may be submitted on paper or CD-ROM (with a paper copy) but may not be submitted via EIE. See the guidance document, presented as an appendix to this direct final rule for details.

In considering the question of whether a CD-ROM must be accompanied by a paper copy, we have encountered the first of several questions about what is "practicable" to do

electronically. The GPEA requires that agencies accept electronic submissions only when it is "practicable" to do so, but the statute does not define the term "practicable." However, the term tends to acquire meaning in concrete circumstances, in, for example, considering whether the state of technology enables us to dispense entirely with paper copies of applications. The NRC has also had to consider, among other questions, to what extent sensitive information could be protected in electronic submissions, whether such submissions could serve the needs of immediate notification, and whether the agency was prepared to make all of its outgoing communications electronic. In each of these cases, as will be discussed further below, the agency has concluded that electronic submissions are not yet always "practicable," because use of electronic submission in these other situations can entail disproportionate costs in time, labor, and other resources, and sometimes can even delay doing something that needs to be done quickly. If one aim of the GPEA is to reduce the cost of government, then, when the use of electronic forms of submission adds to that cost, the use of those processes are, at least for the time being, not "practicable."

What is practicable in a given situation can change quickly because the underlying technology changes quickly. Under these continually changing circumstances, the NRC does not want to write certain technologies into its regulations. Therefore, the technologically driven details of how to make electronic submissions to the NRC are laid out in the guidance document that is appended to this rule for public comment. The guidance document will be updated as necessary to reflect new technology and agency experience. The guidance discusses, among other topics, the formats the NRC is prepared to accept, the use of electronic signatures, and the treatment of nonpublic information. Most of the amendments made by this rule take the limited approach <sup>2</sup> simply of letting readers of the regulations know that the option of electronic submission is available in many cases, and that readers should consult the agency's guidance on electronic submissions.

When this direct final rule takes effect, the new guidance document will supersede all of the existing guidance documents on electronic submissions -- the Regulatory Issue Summary 2001-05, which was directed toward Part 50 applicants and licensees, and the August 10, 2001 letter, which was directed toward certain fuel cycle facilities.

Few of the NRC's regulations on communications explicitly rule out electronic communications. Thus it has not proven difficult to remove regulatory text that impedes electronic communications in circumstances where electronic communications would be practicable. In searching our regulations, we found only one regulation -- § 50.4(c) -- that explicitly requires submission of paper. Many of our regulations require written, or written and signed, communications. These requirements need not be changed because electronic communications certainly are "written" and we have in place technology for electronic signatures.

We have not had to propose amendment<sup>s</sup> to our regulations on maintenance of records. A great many of these already explicitly permit the use of electronic means to maintain records, and those that do not explicitly permit electronic maintenance of records do not in any way imply that electronic strategies for preservation are disallowed. ✓

Thus, our amendments are confined largely to regulations that ~~somehow~~<sup>g</sup> imply that electronic means of communication are prohibited. The typical regulation of this sort says that communications under a certain part of our regulations must be by mail or delivery in person. By appearing to be exhaustive, the regulation may be read to imply that electronic communication is prohibited. We have amended almost all of these or similar provisions, leaving in place only those regulations that dictate telephonic or similar communications when circumstances demand, as, for example, when a licensee must notify the agency immediately of a radiological overexposure or an accidental release of radioactive material.

commences at the shipping facility, that a written advance shipping notice has been sent to the Office; and

(iii) The Spent Fuel Project Office will be notified by telephone at (301) 415-8524 of any changes to the shipment itinerary.

\* \* \* \* \*

(g) \* \* \*

(1) Provide to the Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, the information required under paragraph (f) of this section.

\* \* \* \* \*

118. In § 70.21, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 70.21 Filing.

(a)(1) A person may apply for a license to possess and use special nuclear material in a plutonium processing or fuel fabrication plant, or for a uranium enrichment facility license by filing the application with the Director of the NRC's Office of Nuclear Material Safety and Safeguards in accordance with the instructions in § 70.5(a). If the application is on paper, one <sup>or CD-ROM</sup> copy must be provided. If the application is submitted electronically, see guidance for electronic submissions to the Commission.

(2) A person may apply for any other license issued under this part, by filing the application in accordance with the instructions in § 70.5(a). If the application is on paper, one copy must be provided. If the application is submitted electronically, see guidance for electronic submissions to the Commission.

\* \* \* \* \*

119. In § 70.32, the second sentence of the introductory text of paragraph (c)(2), the last sentences of paragraphs (d), (e), and (g), and the third sentence of paragraph (i), are revised to read as follows:

(1) An application for a certificate of compliance must be tendered by filing the application with the Director of the NRC's Office of Nuclear Material Safety and Safeguards, with copies sent to the NRC Region III Office and appropriate resident inspector, in accordance with § 76.5. If the application is on paper, <sup>or CD-ROM</sup> 20 copies must be filed with the Director. If submitted electronically, see Guidance for Electronic Submission to the Commission at <http://www.nrc.gov/site-help/eie.html>.

\* \* \* \* \*

158. In § 76.120, the third sentence of the introductory text of paragraph (d)(2) is revised to read as follows:

§ 76.120 Reporting requirements.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \* These written reports must be sent to the NRC by an appropriate method listed in § 76.5. \* \* \*

\* \* \* \* \*

PART 81--STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

159. The authority citation for Part 81 is revised to read as follows:

AUTHORITY: Sec. 156, 161, 68 Stat. 947, 948, as amended (42 U.S.C. 2186, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

160. Section 81.3 is revised to read as follows:

§ 81.3 Communications.

All communications concerning the regulations in this part, including applications for licenses, should be sent to the NRC either by mail addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example,



AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DIAZ

SUBJECT: **SECY-02-0096 - DIRECT FINAL RULE ON ELECTRONIC  
MAINTENANCE AND SUBMISSION OF INFORMATION**

Approved xx *js* Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

*[Handwritten Signature]*  
\_\_\_\_\_  
SIGNATURE

*July 17, 02*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes X No \_\_\_\_\_

COMMENTS OF COMMISSIONER DIAZ ON SECY-02-0096

I approve publication of the direct final rule, proposed rule and associated guidance for comment. I urge the staff to resolve, soon rather than later, the technical and other issues that present obstacles to full reliance on electronic submissions, so that the burdens associated with requirements for paper submission and multiple copies can be eliminated or reduced.

I also concur in the Chairman's comments and edits.

Before final action on this paper, the staff should also submit to the Commission, via errata sheet or other mechanism, the changes to the final rule and guidance document that it proposes "to ensure that it reflects current agency policy on information available to the public." (SECY-02-0096, p. 4). It is my understanding that the staff has completed its review for this purpose and may suggest only two minor changes to the guidance document to add references to Sensitive Homeland Security Information.

A handwritten signature in black ink, appearing to be "LDZ", is located below the text of the second paragraph.

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: **SECY-02-0096 - DIRECT FINAL RULE ON ELECTRONIC  
MAINTENANCE AND SUBMISSION OF INFORMATION**

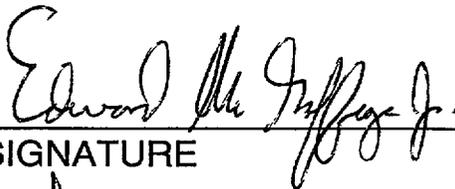
Approved  <sup>w/edits</sup> Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

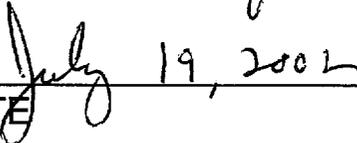
Not Participating \_\_\_\_\_

COMMENTS:

See attached edits to the Federal Register Notice.

I also agree with the Chairman's edits.

  
\_\_\_\_\_  
SIGNATURE

  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

A regulatory analysis has not been prepared for this rulemaking. The amendments below will neither impose nor relax new 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. Moreover, the NRC is required by the Government Paperwork Elimination Act, Pub. L. 105-277 (44 U.S.C. 3505, note), to allow electronic submissions where practicable, and the direct final rule does simply that. Thus, an analysis of costs and benefits could not alter a decision to implement the policy embodied in this rule. However, the NRC believes that the rule will afford all persons who deal with the agency greater flexibility in choosing the format of many of their communications and, thus, will allow them to choose less costly alternatives, often reducing the current costs of their communications with the NRC.

#### X. Regulatory Flexibility Analysis

In accordance with Section 605(b) of the Regulatory Flexibility Act (Title 5, Chapter 6 of the U.S. Code), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. Therefore, in accordance with Section 605(b), the NRC is not preparing a regulatory flexibility analysis. The rule will in fact apply to the many small entities that are among the NRC's licensees, but it will impose no new burdens on those small entities. To the contrary, as noted in the regulatory analysis section of this notice, the agency's expectation is that the rule should reduce burdens.

The NRC invites comment on this certification. The agency is also providing the certification to the Chief Counsel for Advocacy of the SBA, in accordance with Section 605 of the Regulatory Flexibility Act.

#### XI. Backfit Analysis

~~The NRC has determined that a backfit analysis is not required for this rule. The backfit rule, 10 CFR 50.109, does not apply to this direct final rule because this rule does not include any provisions that would require backfits as defined in 10 CFR Chapter I, and because this rule is necessary so that the NRC can respond adequately to the mandate in the Government~~

*The NRC has determined that a backfit analysis is not required for these amendments*

*do not include any provisions that would require backfits as defined in 10 CFR Chapter I.*

*Furthermore,*