



Department of Energy
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QA: N/A
Project No. WM-00011

RULES AND DIRECTIVES
Branch
1050

SEP 20 2007

OVERNIGHT MAIL

Chief, Rulemaking, Directives, and Editing
Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

6/28/07
72 FR 35521

(8)

RECEIVED

2007 SEP 21 PM 3:19

U.S. DEPARTMENT OF ENERGY'S (DOE) COMMENTS ON U.S. NUCLEAR REGULATORY COMMISSION (NRC) GUIDANCE FOR ELECTRONIC SUBMISSIONS TO THE NRC

In response to the NRC's announcement of issuance for public comment of "Guidance for Electronic Submittal to the NRC" in the Federal Register on June 28, 2007 (72 FR 35521), the DOE is providing the enclosed comments. This NRC guidance document is intended to consolidate the following three guidance documents which are superseded: (1) *Guidance for Submission of Electronic Docket Materials under 10 CFR Part 2, Subpart J*; (2) *Guidance for Submission of Electronic Docket Materials (10 CFR Part 2, Subpart C, 10 CFR Part 13, 10 CFR Part 110)*; and (3) *Appendix A, United States Nuclear Regulatory Commission (NRC), Guidance for Electronic Submissions to the Commission*.

There are no new regulatory commitments in this letter or its enclosure. Please contact Joe C. Price at (702) 794-1441 or e-mail joe_price@ymp.gov for any additional information required.

April V. Gil, Acting Director
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RAO:JCP-1450

Enclosure:

U.S. Department of Energy's (DOE) Comments
on the U.S. Nuclear Regulatory Commission's
(NRC) Guidance for Electronic Submissions to
the NRC

SUNS1 Review Complete
Template = ADM-013

FRDS = ADM-03
Add = T. Smith
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SEP 20 2007

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ENCLOSURE

**U.S. DEPARTMENT OF ENERGY'S COMMENTS ON THE U.S. NUCLEAR
REGULATORY COMMISSION'S (NRC) *GUIDANCE FOR ELECTRONIC
SUBMISSIONS TO THE NRC***

Comment 1: Chapters 1.1, 1.3.1, and 8

The DOE recognizes that consolidation of NRC electronic document submittal guidance documents into one guidance document is generally advantageous. However, an important element of the guidance document previously applicable to the DOE under 10 CFR Part 2, Subpart J, *Guidance for Submission of Electronic Docket Materials under 10 CFR Part 2, Subpart J*, has been omitted from the combined guidance document.

Chapter 1.2 of the superseded *Guidance for Submission of Electronic Docket Materials under 10 CFR Part 2, Subpart J*, stated that "DOE need not submit its license application via Electronic Information Exchange." This is consistent with 10 CFR 63.22 and 10 CFR 63.4 and has been part of DOE's planning basis for the initial submittal of its license application for the Yucca Mountain repository.

The first paragraph of the Federal Register Notice (72 FR 35521), dated June 28, 2007, regarding the availability, the NRC guidance document *Guidance for Electronic Submissions to the NRC*, states the following:

"...This guidance contains a new chapter providing guidance for Combined License Application (COLA) submittals. Its provisions pertaining to electronic filings in adjudications (other than the high level waste repository licensing proceeding and the Vogtle early site permit proceeding) are not to be used until the Commission issues its final rule on the subject."

To clarify that the License Application for a repository at Yucca Mountain need not be submitted via the EIE and to be consistent with prior guidance and Part 63, DOE requests that the title of Chapter 8 be changed to read:

Special Guidance for Combined License Applications (COLA) and High Level Waste Repository Licensing Proceeding Submittals

Comment 2: Chapter 2.23

The Office of Management and Budget (OMB) has issued guidance to all federal agencies recommending the encryption of all "sensitive information". However, this OMB guidance is not currently reflected in the EIE Guidance. Due to this inconsistency between the NRC and OMB guidance concerning the handling of sensitive data on removable media, DOE requests the NRC consider allowing federal agencies to encrypt sensitive information placed on removable media for delivery to the NRC.

DOE recommends that the second paragraph of Chapter 2.23 be revised to state:

"The NRC may reject any submittal if any inconsistencies are found and will inform the submitter of the rejection. The following issues will result in a submittal rejection:

- *Encrypted files*" (unless previously approved)

Comment 3: Chapter 2.3

The *Acceptable Spreadsheet File Format Table* in Chapter 2.3 identifies guidance to provide active spreadsheets or data files in a software version that is either current or is within two release levels of current. Given the time span over which the Yucca Mountain Project (YMP) activities and NRC licensing proceedings have occurred, following this guidance would result in the modification of original data files in order to meet these specifications. This would seem inconsistent with NRC requests to provide original, unaltered data. In addition, attempting to bring older spreadsheet data into compliance using this guidance has the potential to result in the following issues:

- Content, formulas, etc., might be inadvertently modified when upgrading the software.
- The software and the data developed may have been certified or qualified based on a specific revision of the software. Changing the revision could void the pedigree of the developed data.
- The cost and time involved in any effort to ensure accuracy in any such conversion could negatively impact DOE's ability to respond to NRC's requests in a timely and accurate manner.

DOE recommends that the NRC allow the submittal of legacy data in older software versions and that Chapter 2.3 should be modified to clarify such expectations.

Comment 4: Chapter 2.5

The third paragraph of Chapter 2.5 states:

"The maximum size of the file(s) submitted to the NRC governs the acceptable method of transmission. For example, submitters may use a single transmission to electronically submit one or more PDF files and/or accepted spreadsheet files so that the total size of the submitted file(s) does not exceed 50 MB, including all attachments. Submitters should use the OSM transmission method in all other cases unless e-mail or facsimile is a more appropriate option."

The last sentence suggests that all submittals with a total file size of greater than 50 megabytes (MB) (i.e., "in all other cases" besides the single transmission of <50 MB) must use the optical storage media (OSM) transmission method. This requirement is inconsistent with the guidance for Large Document (bundle) submittals in Chapter 2.2 as well as the subsequent table in Chapter 2.5.

DOE recommends deleting the last sentence in the third paragraph of Chapter 2.5.

Comment 5: Chapter 2.7

The fourth bullet in the third paragraph in Chapter 2.7 says:

"A disclaimer statement for each submitted file that may have links to another file(s) or to the Internet (see Chapters 2.12.1 and 10.1 for examples)."

This statement suggests that a submittal of multiple files is required to have multiple disclaimer statements. However, Chapter 2.12.1 provides that a single-disclaimer statement is appropriate for submittals of multiple files.

To clarify the requirements in Chapter 2.7, DOE recommends revising the fourth bullet as follows:

A disclaimer statement for any submittal of file(s) that may have links to another file(s) or to the Internet (see Chapters 2.12.1 and 10.1 for examples).

Comment 6: Chapter 2.9.

Many of these portable document format (PDF) specifications should be characterized as typical default settings that may be modified as appropriate depending on local organizational workflow and product requirements that do not conflict with EIE and electronic hearing docket (EHD) requirements.

For example:

- Color management specifications are irrelevant to EIE and EHD requirements, and should be allowed to be modified as appropriate to match the submitter's print intent.
- Auto-rotation of pages is another non-critical specification that is an issue of print intent and is something usually modified after initial PDF creation for printer specifications for paper copies or for electronic versions.
- Saving the PDF settings file inside the PDF represents a best-practice process setting, but should not be considered a requirement for all files submitted. When PDF files must be split to meet the 50 MB file size limit, these attached settings files are lost.
- The guidance to allow PostScript to override job options will allow all settings given in this guidance to be replaced by others potentially placed in the postscript file. It is a process-oriented specification that undermines the intended results of the guidance.

In addition, the PDF specifications in Chapter 2.9 include ZIP image compression, but Chapter 2.3 allows the use of JPEG2000, which DOE plans to utilize in the preparation of its electronic documents.

DOE recommends clarifying this information by changing the first paragraph of **Chapter 2.9, Settings for Creating PDF Formatted Text and Graphic Files,** (underlined), to state the following:

The NRC has established a custom optimization that strikes a balance between print and screen optimizations. This custom optimization provides adequate retrieval response time for online viewing while providing sufficient clarity and resolution for printing. The settings established for this custom optimization are listed below and should be considered as typical settings recommended for use on all submittals to the NRC. The settings may be modified provided that the resulting files meet the requirements and expectations provided elsewhere in this guidance, such as Chapter 2.3. The settings are specific to Adobe® Acrobat 8.0. However, when PDF creation software other than Adobe® Acrobat 8.0 is used, the PDF creation software should be configured with values equivalent to those listed below. All fonts should be embedded in the PDF file to ensure compliance with National Archives and Records Administration (NARA) guidelines.

Comment 7: Chapter 2.16

The first paragraph of Chapter 2.16 says:

“Those submitting documents electronically do not need to send hard copies of the electronic documents. In instances where the NRC requires a paper copy for accessibility or other reasons, the NRC will make every effort to produce the copy using NRC resources.”

DOE supports this general approach. However, DOE is required under 10 CFR Part 2 and 63.22 to submit numerous hard copies of its Yucca Mountain license application (LA) in addition to submitting the LA on optical OSM. DOE intends to submit the paper copies of the LA and to submit the LA on OSM, consistent with these regulatory requirements.

Comment 8: Chapter 2.18

The last paragraph of Chapter 2.18 says,

“If multiple OSMs are submitted, place the table of contents for the entire submission on each OSM in the multi-set submission.”

It is not clear what “table of contents” means in this context. It could indicate a document table of contents with document page numbers, or it could be understood as a readme file listing the OSM file contents. In either case, it appears to contradict requirements in Chapter 8.1 prohibiting readme files or “any other instructional information on how to access or use the submission.” It may also be redundant to the requirement in Chapter 2.7 to include in the submittal letter a listing of files comprised by the submittal. The guidance in Chapter 2.7 is clear and sufficient to ensure that contents of the submittal are communicated effectively.

DOE recommends that this paragraph in Chapter 2.18 be deleted.

Comment 9: Chapter 2.19

Chapter 2.19 on sensitive unclassified non-safeguards information (SUNSI) should add a bullet to the 5th paragraph to address submittals of information designated as official use only (OUO) by another government agency, such as DOE. The referenced guidance, such as NRC’s RIS-2005-31, focuses on marking and control procedures developed to apply to licensees and applicants who are part of the private sector and who may use 10 CFR 2.390(d) as justification to protect security-related information. Other government agencies such as DOE have established procedures for designating, marking, and controlling similar security-related information as OUO and do not use the 10 CFR 2.390 designation.

DOE recommends adding a bullet to address this issue in general:

In addition to the above guidance, other government agencies may designate, mark, and control information according to their procedures. Such information, if not safeguards information or classified information, will be handled by NRC as SUNSI when submitted to NRC without requiring additional markings.

Comment 10: Chapter 2.20

Chapter 2.20 on safeguards information and classified information contains the sentence:

"The mailing package containing OSM [optical storage media] with documents comprised of safeguards, proprietary, or Privacy Act information should be processed, marked and transmitted in accordance with the requirements set forth in 10 CFR 2.390(b), 73.21(e), 73.21(g), and 73.21(h), as appropriate."

However, this Chapter should not address proprietary or Privacy Act information, since that information is addressed in Chapter 2.19.

DOE recommends revising the sentence as follows:

The mailing package containing OSM with documents comprised of safeguards information should be processed, marked and transmitted in accordance with the requirements set forth in 73.21(e), 73.21(g), and 73.21(h), as appropriate.

Comment 11: Chapter 4.1

Chapter 4.1, 1st paragraph, 4th bullet states that OSM should be used when:

"The document contains sensitive unclassified information (e.g., Safeguards information) or classified information (e.g., National Security information or Restricted Data)."

This phrase implies that all types of sensitive unclassified information should be submitted on OSM. However, Chapter 2.19 states that one type of sensitive unclassified information (i.e., sensitive unclassified non-safeguards information), but not safeguards information or classified information may be submitted via EIE or, if that is not practical, on OSM.

DOE recommends for clarity and consistency, changing the quoted phrase in the 4th bullet to:

The document contains safeguards information or classified information.

Comment 12: Chapter 4.2

Chapter 4.2, 2nd paragraph refers to additional requirements for classified information, SUNSI information, or non-public documents. These additional requirements also address safeguards information.

DOE recommends adding safeguards information to the list.

Comment 13: Chapter 4.2.2

Chapter 4.2.2, 2nd paragraph refers to marking and transmittal requirements in 10 CFR 2.390(b) for mailing packages that contain proprietary, personal privacy, and OUO information. However, 10 CFR 2.390(b) contains no marking and transmittal requirements for mailing packages.

DOE recommends substituting language based on Attachment 1 in NRC's RIS-2005-31 (a document referenced in Chapter 2.19):

The mailing package should be an opaque envelope with no external markings to indicate the presence of sensitive unclassified non-safeguards information.

Comment 14: Chapter 8.3

Section 8.3 seems to assume that “OSM submission” and “OSM” (e.g., a CD) are synonymous. For example, 8.3.5 directs an extensible markup language (XML) “packing slip” to be included in the “root folder”. If an OSM submission is composed of more than one CD, then there will be more than one root folder for each submission. In cases where an OSM submission includes a document (or documents) on more than one CD, the guidance should clarify whether the packing slip on a given CD should reflect the contents of that single CD or the contents of the entire submission (and therefore be identical on each CD in the submission). The implications of multi-CD OSM submissions may also affect how a submitter prepares path-relative hyperlinks (described in Section 8.3.2). In addition, the format and content requirements for the “packing slip” are outlined generally in Section 8.3.5, but it states that the “tool for generating packing slips” will be provided by the NRC. The availability of that tool is critical to having an unambiguous understanding of the submittal content requirements.

DOE recommends that this guidance be clarified to include requirements for an OSM submission consisting of multiple CDs or DVDs. In such a circumstance, the submitter should be expected to include a description of how component files must be arranged in folders in order to ensure path-relative links function as intended. To the same end, DOE recommends that packing slips be prepared on a per-submission basis and a copy included on each OSM comprised by that submission. Lastly, DOE requests that the tool for generating packing slips be demonstrated and available soon.