

August 5, 1999

SECY-99-205

FOR: The Commissioners

FROM: Stuart Reiter /s/
Acting Chief Information Officer

SUBJECT: RULEMAKING PLAN: REVISION OF 10 CFR TO PERMIT THE SUBMISSION
OF DOCUMENTS ELECTRONICALLY; MINOR CORRECTIONS

PURPOSE:

To inform the Commission that the Office of the Chief Information Officer (OCIO) intends to implement the enclosed rulemaking plan to facilitate the voluntary electronic submission of documents to the NRC by applicants, licensees, and members of the public. In addition, minor corrections, such as organizational changes, would be incorporated into the rulemaking.

BACKGROUND:

Currently, NRC regulations require submissions in paper format from applicants and licensees in all areas except those involving radiation exposure data, waste shipping manifest forms, and nuclear material accounting information. Under 10 CFR § 50.4(c), power reactor licensees and applicants may request an exception to the paper requirement and submit documents electronically on a case-by-case basis by obtaining prior approval and specifications from the OCIO. In the past year, several licensees requested exceptions to submit material in electronic format instead of paper format. One licensee was granted an exception to submit a combination of paper and electronic media, reducing the number of paper copies necessary for distribution. In addition, NRC is currently developing the Agencywide Documents Access and Management System (ADAMS), an electronic document management and record keeping system. ADAMS is expected to be operational in FY2000. Amendments to the NRC regulations are necessary to provide all licensees, applicants, and other entities the option to make electronic submissions voluntarily to the NRC without first seeking approval from the NRC to do so.

DISCUSSION:

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(301) 415-2062

The use of electronic submission represents a significant change from current NRC practice. Electronic submission is currently permitted in 10 CFR 50.4(c) only as an exception. Under §50.4(c), voluntary electronic submission is routinely available to reactor licensees if the NRC staff grants an exception following review of each request. The proposed rulemaking would grant broad authority to all licensees, applicants, and other entities to file electronically without having to seek prior NRC approval, and would specify the criteria for doing so. Electronic submissions would be captured more easily in ADAMS than would their paper counterparts.

In addition, this rulemaking would further NRC compliance with several legislative and regulatory mandates, such as the Paperwork Reduction Act of 1995 and OMB Circular A-130, entitled "Management of Federal Information Resources" (Rev. Feb. 8, 1996). OMB Circular A-130 specifically requires agencies to use electronic collection techniques where they reduce the burden on, and/or provide better services to, the public. OMB has encouraged the NRC in a variety of contexts to reduce paper submissions and allow for electronic submissions without requiring prior NRC approval. Moreover, the Government Paperwork Elimination Act of 1998 requires agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic recordkeeping, where practicable, by October 21, 2003. Furthermore, as NRC continues to explore the technical aspects of compliance with the requirements of the Paperwork Reduction Act and OMB Circular A-130, the transition from paper to electronic communications would be facilitated by establishing a central location to which submissions to the NRC can be transmitted electronically in accordance with NRC formatting and procedural requirements.

Before promulgating this rule, the OCIO intends to issue an Administrative Letter that will grant a generic exemption to the prior approval requirement pursuant to 10 CFR § 50.4(c), provided certain specifications are met. The Administrative Letter will set forth the specifications for electronic submissions. The OCIO plans to use the same specifications in the proposed rulemaking proceeding, which would broaden the generic exemption to include all NRC licensees, applicants, and other entities, not just reactor licensees. Comments received regarding the specifications set out in the Administrative Letter will allow the OCIO to address some public concerns before initiating the rulemaking. As a result, the OCIO does not expect significant adverse public comments on this rulemaking.

The rulemaking plan presents two rulemaking options. Under Option 1, OCIO, following Commission review, would issue a direct final rule simultaneously with a proposed rule. If NRC does not receive significant adverse comments, the final rule will take effect 60 days after publication. If NRC receives significant adverse comments, the staff will continue this initiative as a proposed rule. Under Option 2, the OCIO, following Commission review, would publish a proposed rule with a 30-day comment period, and would subsequently publish a final rule addressing comments received.

RESOURCES:

Resources to complete and implement the rulemaking are included in the current budget.

COORDINATION:

CONTACT:

Michael D. Collins, OCIO/IMD/RMB
(301) 415-2062

The Office of the General Counsel has no legal objection to this rulemaking plan. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objection. The Office of the Executive Director for Operations has reviewed this paper and concurs in it.

RECOMMENDATION:

That the Commission note that unless directed otherwise, the staff plans to implement the rulemaking plan as described in Option 1 (issuance of a direct final rule simultaneously with a proposed rule) within 10 days of the date of this paper. Action will not be taken until the SRM is received. We consider this action to be within the delegated authority of the CIO.

Stuart Reiter
Acting Chief Information Officer

Attachment: Rulemaking Plan

RULEMAKING PLAN: REVISION OF 10 CFR TO PERMIT THE SUBMISSION OF DOCUMENTS ELECTRONICALLY; MINOR CORRECTIONS

Regulatory Issue

Currently, with few exceptions, Title 10 of the Code of Federal Regulations (10 CFR) requires licensees, applicants, and other entities to submit documents to the NRC in paper format. For submissions governed by Part 50, exceptions to submittal in paper format, including electronic submittal, are permissible. Part 54, concerning license renewal for operating nuclear power plants, references 10 CFR 50.4, and thus indirectly allows use of the 50.4(c) exception. However, in each case, the submitter must request prior approval from the OCIO for the exception. Submission criteria are then established based on the individual request. For submissions governed by other parts of 10 CFR, no provision is made for electronic submission. A major objective of this rulemaking is to amend the regulations to permit voluntary electronic submission of documents and to provide procedures for submitting documents electronically. In addition, the Agencywide Documents Access and Management System (ADAMS) is scheduled to become operational in FY 2000. Amending the regulations to permit electronic submission will facilitate the electronic capture of externally generated documents into ADAMS.

The rulemaking would address and improve the document control and records management issues which are of concern to the NRC, its applicants, licensees, and members of the public by improving the process of communication, dissemination, and storage of records. In addition, the rulemaking would incorporate minor corrections to the current regulations regarding the submission of documents to the NRC, e.g., organizational, name, and phone number changes.

Existing Regulatory Framework

10 CFR § 50.4 delineates the procedures that reactor applicants and licensees must follow when submitting reports, applications, and other documents required by Part 50. Section 50.4(c) specifically requires all submissions to the NRC to be made in paper format unless an exception is granted. Those persons seeking an exception must obtain prior approval from the NRC on a case-by-case basis. Certain other parts of the 10 CFR permit the electronic submission of specific forms: Uniform Low Level Waste Manifest (NRC Forms 540, 541, and 542) in Part 20; Nuclear Material Transfer Reports in Parts 72, 74, and 75; material status reports in Parts 72 and 75; and inventory and accounting reports in Part 75. The majority of the 10 CFR does not provide for electronic submission. This rulemaking would extend the use of electronic submissions to other parts of the 10 CFR by amending Part 2 to detail the procedures to be followed by applicants, licensees, and others who choose to submit documents electronically to the NRC. Each affected part of the 10 CFR would then reference the provisions found in Part 2. This rulemaking would be consistent with existing legislative and regulatory initiatives, including the Paperwork Reduction Act of 1995, OMB Circular A-130, entitled "Management of Federal Information Resources" (Rev. Feb. 8, 1996), and the Government Paperwork Elimination Act of 1998.

How the Regulatory Issue Will Be Addressed by Rulemaking

This rulemaking would authorize voluntary electronic submission of documents to the NRC and would delineate the applicable procedures and technical specifications. 10 CFR Part 2 would be amended to provide the authority and procedures to be followed by licensees, applicants, and other entities in making electronic submissions. In addition, each affected part would be cross-referenced to Part 2 to identify the appropriate specifications for electronic submission.

Rulemaking Options

- Option 1 - Direct final rule/proposed rule issued by OCIO following Commission review Under this option, a direct final rule would be issued simultaneously with a proposed rule. The OCIO would publish a Federal Register notice indicating the final rule will take effect 60 days after publication, unless the NRC receives significant adverse comments during the prescribed comment period, which is 30 days after publication. Any significant adverse comments received will be considered as comments on the companion proposed rule. This option is the most efficient choice if the Commission does not receive significant adverse public comments on the direct final rule; the final rule would take effect approximately 8 months from the date of Commission approval of the rulemaking plan.

Informal discussions between the OCIO and the Office of Management and Budget (OMB) on this matter have indicated that OMB is encouraging the NRC to promulgate this rule and may not require NRC to obtain a clearance for the information collection provisions of the rule under the Paperwork Reduction Act. Obtaining a clearance would take approximately three months. In the event OMB requires NRC to obtain a new clearance, NRC will be required to use Option 2.

- Option 2 - Proposed rule issued by OCIO following Commission review Under this option, the OCIO would publish a proposed rule in the Federal Register with a 30-day comment period, and would subsequently publish a final rule addressing comments received. This approach would take approximately 11.5 months (from the date of Commission approval of the rulemaking plan) for issuance of a final rule.

Alternatives

The only alternative to this rulemaking would be to maintain the status quo, a decision that would raise some concern from OMB. OMB has granted NRC shorter clearances (eighteen months, as opposed to the standard three years) with regard to written communication requirements in Part 54, in an effort to encourage electronic filing. Without a rulemaking, Part 50 licensees would continue requesting exceptions to paper submission on a case-by-case basis in accordance with the procedures specified in § 50.4(c). In addition, licensees subject to other parts of the 10 CFR which do not currently authorize electronic submission would have no recourse but to continue submitting documents to the agency in paper format. The primary purpose of this rulemaking is to enable applicants, licensees, and others to voluntarily submit documents to the NRC electronically. The most efficient way to facilitate this is to publish a regulation that states the applicable procedures these persons must routinely follow prior to submitting documents to NRC, rather than continuing the tedious process of reviewing each request for exception, or providing no vehicle at all for requesting exceptions to paper submission.

Impact on Licensees

Implementation of this rule is expected to simplify submission procedures. Therefore, applicants and licensees should experience some reduction in administrative burden.

Benefits

Licensees and applicants would benefit from a reduction in the administrative costs associated with paper submission. The rulemaking would reduce the number of paper copies that are required to be sent to the NRC under current regulations.

The rule would benefit NRC and members of the public by providing better control of documents once they enter the agency. Electronic documents would be more easily distributed to agency staff and entered into ADAMS for document management and record retention. The public would benefit from the ease of online access and retrieval via the NRC website. Furthermore, all affected persons would benefit from the timeliness of information submitted electronically.

Delegation of Authority to the OCIO

By authorizing the OCIO to issue this rule following Commission review, the Commission would be delegating its rulemaking authority to the OCIO on this matter. The current delegation of authority, set forth in a memorandum dated August 4, 1997, from the Chairman to the Chief Information Officer, does not extend to the promulgation of certain proposed or final rules that involve, *inter alia*, questions of policy such as a change in existing policy. This proposed rulemaking proceeding constitutes a change in existing NRC policy.

Legal Analysis by the Office of the General Counsel

OGC has no legal objection to this rulemaking.

The proposed rule will not require preparation of an environmental assessment as this action covered by the categorical exclusion found in 10 C.F.R. 51.22(c)(1). Similarly, no backfit analysis would be required under 10 C.F.R. 50.109. Finally, this would not be a “major rule” under the Small Business Enforcement Act. OMB has generically determined that amendments to 10 C.F.R. Part 2 do not constitute “major rules”.

Major Rule

On the basis of the criteria stated in the Small Business Regulatory Enforcement Fairness Act, this action does not constitute a “major rule.”

Backfit Analysis

A backfit analysis is not required because this proposed rulemaking does not involve any provisions which would impose backfits as defined in 10 CFR § 50.109(a)(1). This proposed rulemaking provides an option for external stakeholders to voluntarily submit documents electronically to the Commission. It does not propose a change to or additions to requirements

for existing structures, systems, components, procedures, organizations or designs associated with the construction or operation of a facility.

Agreement State Implementation Issues

This rule is classified as compatibility category “NRC” and addresses areas of exclusive NRC regulatory authority.

Supporting Documents Needed

OCIO is preparing an Administrative Letter, which will detail procedures for submitting documents electronically to the NRC under the existing rules. After issuance of this Letter, and receipt of comments thereon, these procedures or modified procedures will be incorporated into the rule, which is intended to further streamline NRC’s processes.

Issuance by the Office of the Chief Information Officer or the Commission

This rule is to be issued by the Office of the Chief Information Officer, after review by the Commission.

Interoffice Management Steering Group

A steering group is not required for this rulemaking.

Public/Industry Participation

The OCIO has been actively providing information on electronic information exchange (EIE) to user groups such as the Nuclear Information and Records Management Association (NIRMA), Regulatory Compliance and Technology Group (RCTG), American Nuclear Society (ANS), Nuclear Energy Institutes (NEI) as well as presentations at the Regulatory Information Conference. Information on EIE will be provided to the public on the NRC web site, and NEI is preparing an information notice and a survey of its membership. If more information is needed based on public feedback and the NEI survey, NRC will hold facilitated stakeholder sessions or workshops to clarify further the role of EIE at the NRC. After publication of the direct final rule/proposed rule in the Federal Register, the public and industry will have the opportunity to comment on the rule.

Resources Needed to Complete Rulemaking

Resources to complete and implement the rulemaking are included in the FY 1999 budget.

- OCIO 1.0 FTE
- OGC .15 FTE

Staff Level Working Group

OCIO staff lead
OCIO supporting division staff
OGC staff contact

Michael Collins
IMD/RMB
Gerri Fehst

Schedule

Option 1 - Direct Final Rule

Draft/Finalize EIE processes and procedures	2.5 months
Draft DFR/PR* and obtain office concurrence	2.0 months
Draft DFR/PR to Commission for review	1.0 month
DFR/PR signed by CIO and published in <u>Federal Register</u>	.5 month
Effective date of DFR	<u>2.0 months</u>
	8.0 months

Option 2 - Proposed Rule/Final Rule

Draft/Finalize EIE processes and procedures	2.5 months
Draft PR and obtain office concurrence	2.0 months
Draft PR to Commission for review	1.0 month
PR signed by CIO and published in <u>Federal Register</u>	.5 month
Comment period closes	2.5 months
Review comments and draft FR	.5 month
Office concurrences on FR	.5 month
FR to Commission for expedited review	.5 month
FR signed by CIO and published in <u>Federal Register</u>	.5 month
Effective date of FR	<u>1.0 month</u>
	11.5 months

*DFR = Direct final rule; PR = proposed rule; FR = final rule