

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 amendments to our regulations on maintenance of records. A great many of these regulations 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 to existing regulations are confined largely to regulations that 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 promptly of a radiological overexposure or an accidental release of radioactive material.

These rulemaking amendments and the guidance document appended to this final rule do not address the submission of documents in hearings under the NRC regulations in 10 CFR part 2 and other parts that govern hearings. In particular, the amendments and guidance do not apply to proceedings under 10 CFR part 2 Subpart J, on the issuance of licenses for high-level waste repositories. Subpart J will continue to govern those proceedings. The use of electronic submissions in litigation in Federal courts and agencies is being widely discussed, and this rulemaking is not intended to resolve issues of when and how to use electronic submissions during hearings. Separate rules or guidance addressing procedures for electronic communications in hearings will be issued in the future for public comment. For at least the near future, parties in hearings must follow the directions that presiding officers issue on how submissions are to be made.

This final rule applies only to communications to the NRC from licensees, certificate holders, applicants, vendors who are required to submit documents to the NRC, external entities (Federal, State, and local governments) and other members of the public, but the GPEA is read to apply also to

communications from Federal agencies to the public. Though the NRC is working to further this aspect of the GPEA also, it is not yet practicable for the agency to send all of its communications to licensees and other members of the public by means of electronic submissions. Moreover, the agency must take into account that not all persons who are interested in its work have access to electronic communication. Nonetheless, the NRC's EIE process is designed for both receiving and sending electronic communications. Moreover, the NRC posts a large amount of information on its external Web site, including significant agency communications, and makes information publicly available via ADAMS, the NRC's electronic recordkeeping system.

### III. Comments on the Guidance Document

This analysis presents a summary of the significant comments received on the draft guidance and the resolution of those comments by the NRC. The guidance has also been revised to incorporate editorial corrections, clarifications, and updates of the information, as appropriate.

*Comment 1:* The majority of the commenters objected to the NRC's proposed requirement that a paper copy accompany all submissions on CD-ROM. The commenters disagreed with this requirement, indicating they have moved to an electronic environment based on NRC guidance contained in RIS 2001-05, which states that submissions made on CD-ROM do not require the submission of a paper copy. Several commenters stated that the NRC's paper copy requirement with submissions on CD-ROM was based on the NRC staff's unwillingness to use electronic versions, and the agency's unwillingness to purchase printing equipment that would enable it to make paper copies from the CD-ROM submissions.

*Response:* The NRC proposed that a paper copy be required with CD-ROM submittals because the NRC is required to make information accessible to both its staff and the public. On the public side, this means making the information available not only to those who have the technology to access electronic information, but also to those who do not have access to computers and the Internet. Requiring a paper copy provides the NRC with an efficient means of reproducing documents for members of the public who do not use the technology for various reasons. The paper copy is also a means of making information accessible to individuals

with handicaps, as stipulated in section 508 of the Rehabilitation Act. Many of the formats currently being adopted for electronic information are images of textual information. These images do not work with the assistive technologies currently on the market. However, there are technologies available for converting text from paper to accessible formats for use by the handicapped. Thus, the NRC needs access to paper copies of many electronic submissions in order to provide information to the public.

Before establishing the requirement for submission of a paper copy with CD-ROM submittals, the NRC tested its ability to make copies from samples of CD-ROMs received from several nuclear utilities. Sample CD-ROMs were also provided to leading suppliers of printing and duplication services in the Washington, D.C., area to solicit cost estimates and to verify each supplier's ability to make paper copies from CD-ROMs submitted to the NRC. Both NRC and the local printing community have equipment that could print any file on the sample CD-ROMs. However, in some instances, the complexity of the file structures on the CD-ROM made it almost impossible to accurately reconstruct paper copies from the submissions. In those instances, the cost of creating paper copies from the CD-ROM would be prohibitive. Therefore, the NRC proposed that the individuals who create the documents (licensees, applicants, etc.) provide a single paper copy for use by the NRC for duplication purposes.

Nonetheless, after evaluating the public comments, the NRC is deleting from the guidance the requirement for a paper copy. In those instances where the NRC requires a paper copy for accessibility or other reasons, it will make every effort to produce the copy using NRC resources. The updated guidance includes several new sections on organization and segmentation of files being submitted to the NRC. The new sections will facilitate the NRC's capability to produce paper copies. However, when the agency is unable to successfully generate an accurate paper copy from the CD-ROM, the NRC may require the submitter to produce a paper copy. This will be handled on a case-by-case basis.

*Comment 2:* Commenters encouraged the NRC to develop the capability to handle many of the types of documents listed as "Exceptions to Electronic Submission" in the guidance.

*Response:* Many of the exceptions to electronic submission are not related to the capabilities of NRC systems to handle the electronic information. Some are driven by regulations and processes