

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



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PROPOSED RULE **PR 72**  
**(67FR47745)**

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July 26, 2002

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Attention: Rulemaking and Adjudications Staff

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

re: Part 72 Proposed Rule to Amend Seismic Siting and Design Criteria:  
Request for 15 Day Extension to the Comment Period

Dear Secretary:

This letter is a formal request for a 15 day extension to the comment period on the above-referenced proposed rule, published in 67 Fed. Reg. 47,745 on July 22, 2002, and to the accompanying guidance document, DG-3021, published in 67 Fed. Reg. 48,956 on July 26. As more fully explained below, the date by which public comments are due is the same day by which the State of Utah must file Reply Findings of Facts and Conclusions of Law ("Reply Findings") with the Atomic Safety and Licensing Board involving the very issues that are the subject of this proposed rulemaking.

The State has good cause for requesting an extension. Since 1997 the State has been involved in the Private Fuel Storage, LLC ("PFS") adjudicatory proceeding, Docket No. 72-22, challenging PFS's request for an ISFSI license. One of the key issues in the proceeding is a determination of the appropriate return period to establish the design basis earthquake at the PFS Skull Valley site, the use of probabilistic seismic hazard analysis ("PSHA") methodology, and analysis and modeling to support the design basis earthquake. The State has filed numerous substantive and technically-based documents in the PFS proceeding, including briefs to the

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Commission, on the issues that are squarely addressed in the proposed rule. Over a nine and a half week period, from April to the end of June this year, the State was a party to a formal adjudicatory proceeding in which 22 panels of experts addressed seismic issues at the PFS site. During the hearing there was thoughtful and ground-breaking testimony by internationally recognized experts, a significant portion of whose testimony addressed the specific question on which the Commission has requested comment: "what is the appropriate mean annual probability of exceedance value to be used for the seismic design of an ISFSI ... and what is the justification for this probability?" Further, the State's internationally recognized PSHA experts' contribution to the State's comments will allow the Commission to make a more thorough and informed decision.

The adjudicatory hearing generated almost 10,000 pages of transcripts and hundreds of exhibits. Now the parties to the proceeding are on a vigorous schedule set by the Licensing Board to write and file simultaneous Findings of Fact and Conclusions of Law by August 30, 2002 and Reply Findings by October 7, 2002. Given the voluminous record to review, the technical nature of the issues and the time constraints, it is simply not feasible for the State to divert its efforts from the licensing proceeding to meet the rulemaking and guidance comment period deadline. The proposed rule has been the subject of rulemaking plans at the NRC since at least 1998 and a 15 day extension to the comment period is a very reasonable request.

I realize that NRC may, to the extent practical, consider comments received after October 7. However, given the State of Utah's prolonged participation in the NRC adjudicatory proceeding relating directly to the issue the proposed rule and guidance address - the use of PSHA methodology and the appropriate return period earthquake for an ISFSI - is it critical that the State be given a full and fair opportunity to present its views. The Commission should be informed by all affected stakeholders and, in this case, the State of Utah has a significant stake in the outcome of the proposed rulemaking.

I await your favorable response either extending the comment period to 90 days or otherwise accepting comments from the State of Utah filed 15 days beyond the announced comment period as if they were filed within the formal comment period. In the circumstance there is ample justification to grant this case-specific request.

Sincerely,



Denise Chancellor  
Assistant Attorney General