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QA: NA

**JUL 03 2003**

**OVERNIGHT MAIL**

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**U.S. DEPARTMENT OF ENERGY (DOE) RESPONSE TO U.S. NUCLEAR REGULATORY COMMISSION (NRC) REQUEST FOR COMMENTS IN ANDREW L. BATES' E-MAIL DATED JUNE 13, 2003**

Reference: E-mail, Bates to Multiple Addressees, dtd 06/13/2003

This letter is in response to a request from the NRC for comments on the following four issues:

1. The April 15, 2003, "Analysis Of High-Level Waste Large Documents" discusses four alternatives for fulfilling the requirement in 10 CFR Part 2 for electronic transmittal of documents submitted for the High-Level Waste (HLW) proceeding. The May 9, 2003, "Draft Guidance for Submission Of Electronic Docket Materials Under 10 CFR Part 2, Subpart J" presents draft procedures for the electronic submission of documents under the NRC recommended Alternative 4. Provide comments on the recommended alternative and draft guidance.
2. The discussion covered possible changes to 10 CFR Part 2 to allow service of CDs/DVDs (or other optical storage media) as part of submissions to the HLW Electronic Docket; to require PDF and 300 dpi as the format for adjudicatory filings; and to avoid Licensing Support Network (LSN) document duplication. Options for proceeding with the proposed rule changes include the use of Direct Final Rules, Proposed Rules, and Advanced Notices of Rulemaking. Comments on the best way to proceed with the rulemaking and the scope of the rule change are requested.
3. Indication of interest in participating in testing of the NRC Electronic Information Exchange (EIE) and/or the Draft Guidance for Submission Of Electronic Docket Materials and, if applicable, the identification of a point of contact.
4. Comments on the role and continuing need for and effectiveness of the Licensing Support Network Advisory Review Panel (LSNARP).

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Comments on Issue 1**A. Comments on the April 15, 2003 report entitled "Analysis Of High-Level Waste Large Documents"**

1. With respect to the April 15, 2003 report entitled "Analysis Of High-Level Waste Large Documents," DOE notes that Alternative 1 would be the best option if the NRC could technically remove the possibility of service interruptions or time-outs identified in the NRC report. As noted in the NRC report, this alternative "primarily benefits, and is less restrictive to, the submitter." However, absent confidence from the NRC of being able to remove the possibility of service interruptions or time-outs associated with Alternative 1, the DOE agrees with the NRC recommended selection of Alternative 4.
2. Although DOE generally agrees with the NRC recommended Alternative 4, DOE has two main concerns: 1) Alternative 4 may result in more burden on the parties and more time required for submissions than is necessary if different technology were used; and 2) in NRC's view, adoption of this alternative would require a change to its regulations that may take several months to effectuate. DOE is concerned that Alternative 4 requires the use of optical storage media (e.g., CDs) for complex documents with non-text components (irrespective of size), without an option to transmit the document otherwise if possible, thereby creating an additional burden on DOE. Accordingly, DOE encourages NRC to consider other technical options that would not necessarily require a rule change. One possible option would be a modification of Alternative 4 to allow a party to deposit a collection of files on an NRC server using a process other than the EIE. For the DOE, the transmission method may be a dedicated telecommunications circuit from a DOE facility to an NRC facility utilizing a transmission protocol that has the capability to resume a transmission at the point of interruption, even if the interruption occurred within a file. This approach would be less susceptible to time-outs and interruptions than the EIE process. The NRC would subsequently produce the required CD/DVD, and at that point process the material as if a CD/DVD had been submitted. Since the material would be electronically copied from a DOE computer to an NRC computer, the requirement of the present rule would be met. The DOE is prepared to participate with the NRC to investigate and refine this option as the DOE believes this option is viable, and the benefit of avoiding a rule change is considerable.
3. Alternative 4 would permit electronic transmittal to include submittal through "optical storage media." While this would generally be the media of choice, the DOE recommends that language be inserted to allow the use, with prior approval of the NRC, of other physical storage media. This is to allow the flexibility to

utilize the best technology in a specific case that was not anticipated during the development of the guidance.

**B. Comments on the May 9, 2003 report entitled "Draft Guidance for Submission Of Electronic Docket Materials Under 10 CFR Part 2, Subpart J"**

In Section 2.0 of the report, it is recommended that the "courtesy copy" CD requirement be removed for "large" documents. This is an unnecessary requirement in the (possibly frequent) case where all of the document segments were delivered electronically, and this negatively impacts the submitter's costs by requiring the creation and shipping of redundant information. Further, this unnecessary duplication only increases the opportunity for human error resulting in inconsistencies between the two copies. It is requested that you also remove this requirement in any other sections, including 5.0.

1. Section 3.9 states that "Submitters should not use hypertext links between electronic files." However, a segmented document will require hypertext links between segments of the document in order to be a navigable (i.e., useable) document on the participant LSN website. It is recommended to remove this restriction against hypertext links so that a participant that produces a segmented document for transmittal to the docket can host that same segmented document on its participant website. In the absence of accepting this recommendation, the participant will be forced to have two versions of a document—the LSN version and the electronic hearing docket version. While this inconsistency will be necessary for some legacy documents, it should not be necessary for new documents.
2. Section 5.0 addresses "Optical Storage Media" submissions. As noted above, while this would generally be the media of choice, the DOE recommends that language be inserted to allow the use, with prior approval of the NRC, of any other physical storage media. This is to allow the flexibility to utilize the best technology in a specific case that was not anticipated during the development of this guidance.

Comments on Issue 2

The NRC requested comment on possible rule changes necessary to: 1) allow service of CDs/DVDs (or other optical storage media) as part of submissions to the HLW docket; 2) require PDF and 300 dpi as the format for adjudicatory filings; and 3) avoid LSN document duplication. Comment was also requested regarding the best way to proceed with such rule changes.

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1. With respect to the first two possible rule changes, DOE believes these are technical implementation issues, and strongly encourages the NRC to explore other avenues for addressing these issues without the necessity for a rule change. Though DOE appreciates the need for clarity in this area, DOE is concerned that changes in regulations at this time may create uncertainty in the process. In addition, DOE believes it is important for the NRC to retain some flexibility in its processes to adapt to changes or challenges in technology without resort to a rule change with every advance in technology. For example, the first possible rule change, to overcome certain technical problems regarding electronic submission of large or complex documents, could be accomplished in other ways as described above in response to Issue 1. The second rule change, regarding the format of documents as PDF and 300 dpi, could be addressed by the NRC in a guidance document such as "Submission of Electronic Docket Materials under 10 CFR Part 2, Subpart J," instead of through a rule change. Both cases illustrate the changing dynamic of electronic transmission, and the need to retain some flexibility in this area.
2. Finally, the third possible rule change would seek to eliminate "document duplication" within the LSN. DOE supports the concept of limiting duplicate documents in the LSN as a means of improving the efficiency and usefulness of the LSN. Nevertheless, there are several issues associated with such an effort that bear further consideration before determining whether to initiate a rule change, and by what means. First, given the expected volume of documents in the LSN, any rule regarding duplication should not be absolute. It would be unduly burdensome on the parties, interested governmental participants, and potential parties to impose a rule that there be no duplication of documents within a parties' collection or between the parties' collections. This is particularly true for parties or potential parties other than DOE, since they would certify their LSN collections after DOE and, presumably, after a search of DOE's LSN documents for duplicates. Second, although it may be efficient to minimize copies of the same document on the LSN, it is nonetheless important that each party, interested governmental participant, and potential party retain the responsibility to identify in some manner its documentary material for discovery purposes. Thus, any rule change to avoid duplication of a document should not be structured to avoid the obligation of a party or potential party to identify its documentary material. Third, DOE is concerned that this type of rule change at this juncture could take some time to implement, and may create uncertainty in the current process of preparing documents for the LSN.
3. Lastly, if the NRC believes any or all of the above-described initiatives require a rule change, then DOE believes the most appropriate mechanism would be a direct final rule. This type of rulemaking allows the opportunity for public comment on the rule, while permitting the NRC to move forward expeditiously barring any significant adverse comments raising a major issue. DOE reiterates, however, that a rule change

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will create the risk of delay if the NRC proposed rule change is not completed in time to support the submission of the License Application and subsequent required electronic submissions. There is also a risk that modified or new requirements incorporated in a rule change at this late date may negatively impact the ability of the DOE or other potential parties to meet the requirements of the modified rule.

Comments on Issue 3

In response to the third issue, DOE is interested in participating in testing of the NRC EIE and/or the Draft Guidance for Submission Of Electronic Docket Materials. The DOE point of contact will be Harry E. Leake, Office of Repository Development, Office of Project Support at (702) 794-1457, [harry\\_leake@ymp.gov](mailto:harry_leake@ymp.gov).

Comments on Issue 4

In response to the fourth issue, DOE believes there will be a continuing need to address LSN and electronic docket-related issues. Consequently, DOE sees a continuing role and need for the LSNARP to provide a public forum for discussion of LSN and electronic docket issues and to provide advice to the NRC. DOE will continue to participate on the LSNARP.

OPS:HEL-1407



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