RICHARD H. BRYAN
Governor

STATE OF NEVADA

ROBERT R. LOUX
Director

(19)

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NUCLEAR WASTE PROJECT OFFICE

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April 16, 1985

Commissioner Nunzio J. Palladino
Chairman, Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dear Chairman Palladino:

On January 17, 1985, the Nuclear Regulatory Commission published for notice and comment at 50 FR 2579-2590 amendments to 10 CFR 60, "Disposal of High-Level Radioactive Waste in Geologic Repositories: Amendments to Licensing Procedures." On March 4, 1985, the State of Nevada submitted comments for consideration on the aforementioned proposed rule amendment.

As reflected in the published notice, the aspects of the licensing procedures that the Commission has under review concern (1) the role of the NRC during site screening and site characterization activities, and (2) state, tribal and public participation in NRC activities with respect to geologic repositories. I believe that our comments on this proposed amendment, and our ongoing interaction with the Commission staff, reflect our concern with these issues.

I am, therefore, requesting, at this time, a meeting with the Commission in order to more fully elaborate and clarify our concern with this matter. A meeting similar to the one conducted by the Commission on the DOE siting guidelines (10 CFR 960) would

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add: Clark Prichard, 11305S
James Wolf, 9604-11BB
Edward Regner, 6235S

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provide a good opportunity for the affected states and tribes to discuss these issues and concerns directly with the Commission.

This request should not be interpreted as a request for public hearing, but for a meeting in keeping with the excellent interaction and relationship that the affected states and tribes have had with the Commission.

I look forward to hearing from you in this regard. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Robert L. Loux
Director

RLL/gjb

cc: Commissioner James K. Asselstine
Commissioner Frederick M. Bernthal
Commissioner Thomas M. Roberts
Commissioner Lando W. Zech, Jr.
Secretary Samuel J. Chilk✓
Mr. Robert Browning

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DRAFT CONGRESSIONAL LETTER

Dear Mr. Chairman:

Enclosed for your information is a copy of a notice of rulemaking to be published in the Federal Register.

On January 17, 1985 the Commission published proposed procedural amendments to 10 CFR 60, its statutory authority to license and regulate the disposal of high-level radioactive wastes in geologic repositories (50 FR 2579). The Commission received eighteen comment letters on the proposed revisions to the procedures in 10 CFR Part 60. The final amendments reflect changes suggested by some comments. There were a number of comments related to NRC review of DOE's site selection process, issuance by NRC of a draft site characterization analysis, and the issuance by NRC of amendments to its NEPA procedures which the Commission could not accommodate.

The enclosed amendments make certain revisions to the procedures for site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of a geologic repository for high-level nuclear waste. The proposed amendments affect the means and timing of State and Indian tribe participation. However, the Commission believes that the amendments do not significantly alter the basic principle of providing for the fullest and most complete participation of States and Indian tribes possible within the limits of the Commission's authority. We will continue to keep your committee informed on rulemakings concerning high-level radioactive waste.

Sincerely,

Robert B. Minogue, Director
Office of Nuclear Regulatory Research

Enclosure:
As stated

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ENCLOSURE E

Regulatory Analysis

10 CFR Part 60

1. Statement of the Problem

The final rule 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," as currently written (46 FR 13971), contains procedures for site characterization and the participation of States and Indian tribes in the siting, licensing, and development of high-level radioactive waste repositories. The Nuclear Waste Policy Act of 1982, Public Law 97-425 (Nuclear Waste Policy Act), establishes in considerable detail the procedures to be followed in the process of siting and licensing a geologic repository. The Nuclear Waste Policy Act contains specific provisions for site characterization and State and Indian tribe participation in the process of siting, licensing, and development of high-level radioactive waste repositories.

Revisions to the procedures given in the final rule 10 CFR Part 60 for site characterization and the participation of States and Indian tribes are being published in final form. For the most part, the revisions are needed in order to reflect the provisions of the Nuclear Waste Policy Act of 1982, particularly as they relate to site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of disposal facilities. In addition, however, the Commission is taking this opportunity to clarify its procedures in the light of further understanding and experience gained since the promulgation of the procedural rule.

2. Objective

The objective of the proposed regulatory action is to make certain changes in 10 CFR Part 60 to reflect procedures for site characterization and for State and Indian tribe participation in the process of siting, licensing, and developing of high-level radioactive waste repositories established by the Nuclear Waste Policy Act, and to clarify the Commission's procedures in light of the

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experience gained since the promulgation of the procedural rule 10 CFR Part 60 several years ago.

3. Alternatives

(a) Leave the final provisions of 10 CFR Part 60 (46 FR 13971) intact.

(b) Delete reference to State and Indian tribe participation in the process of siting, licensing, and development of a repository in 10 CFR Part 60, and publish procedures for State and Indian tribe participation as a regulatory guide.

4. Consequences

(a) Proposed Action: Publish final amendments to 10 CFR Part 60 to bring procedures for site characterization and State and Indian tribe participation in the siting, licensing, and development of high-level radioactive waste repositories in accordance with the Nuclear Waste Policy Act, and to clarify the procedures in light of recent experience.

The proposed revisions in 10 CFR Part 60 would bring the final rule in conformity with the Nuclear Waste Policy Act. They would clarify the procedures for site characterization and State and Indian tribe interaction with the Nuclear Regulatory Commission in light of recently enacted legislation and the experience gained over the last several years. The clarification of these procedures would benefit States and Indian tribes by giving them accurate, realistic information about opportunities available to States and Indian tribes to participate in consultations with the Nuclear Regulatory Commission. This would in turn make the process of siting, licensing, and development of high-level radioactive waste geologic repositories more efficient.

The most effective way of promulgating the revised procedures would be as revisions to 10 CFR Part 60. The promulgation of the revised procedures in this format would accomplish the objective with no unnecessary delay in making the revisions public.

(b) Alternative 1: Leave the provisions of the final rule, 10 CFR Part 60, intact.

This alternative would be inadequate because it would result in inconsistencies between the final rule, 10 CFR Part 60 and the Nuclear Waste Policy Act. These inconsistencies would leave uncertain the opportunities for participation of States and Indian tribes in the NRC activities related to siting, licensing, and development of a high-level radioactive waste geologic repository, and could lead to costly and time-consuming inefficiencies in the process.

The staff also considered a variation of this alternative where only minor changes would be made to conform terminology in 10 CFR Part 60 to the Waste Act, as an administrative rulemaking, without opportunity for public comment. This variation would result in the same uncertainties and inefficiencies in the licensing process.

(c) Alternative 2: Delete reference to State and Indian tribe participation in 10 CFR Part 60 and publish procedures for State and Indian tribe participation as a regulatory guide.

If this alternative were adopted, participation of States and Indian tribes would not be governed by the regulations of 10 CFR Part 60. Publishing procedures for State and Indian tribe participation as a regulatory guide would give only suggested guidance. States and Indian tribes have indicated strong preference for formal procedures. The regulatory guide approach would not be suitable for this reason.

5. Decision Rationale

The NRC staff has evaluated the proposed action and two alternative courses of action. The procedures for site characterization and State and Indian tribe participation in the siting, licensing, and development of high-level radioactive waste geologic repositories must be revised to bring them in accordance with the Nuclear Waste Policy Act, and to clarify the procedures in light of recent experience. Revising the procedures for State and Indian tribe participation by means of revising the final rule, 10 CFR Part 60, is the most effective method of accomplishing this.

The staff received numerous public comments on the proposed procedural amendments. While many comments supported the general idea of changes in 10 CFR 60 to bring it in conformity with the Nuclear Waste Policy Act, a number of comments favored retention of some of the aspects of 10 CFR 60 which were proposed for revision. Some commentors were against proposed changes which would remove site screening and selection information from the SCP requirements. An additional proposed changed, deletion of the requirement for a draft SCA to be issued by NRC in advance of the final SCA, drew some unfavorable comment. Nevertheless, the staff has not found sufficient reason to change its decision to choose the proposed action as the preferred alternative.

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on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 4(d) of the CCC Charter Act, as amended (15 U.S.C. 714b(d)), authorizes CCC to adopt, amend, and repeal rules and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised. In accordance with this authority, the regulations at 7 CFR Part 1407 set forth the procedures under which CCC may debar or suspend individuals and firms from contracting with CCC and from otherwise participating in programs administered or financed by CCC. In order to conform CCC's suspension and debarment regulations with those of the Department of Agriculture, CCC proposes to revise Part 1407 to adopt the Department's suspension and debarment regulations found at 41 CFR 4–1.600 *et seq.* and to provide that: (1) CCC suspension and debarment proceedings shall not be applicable to contracts entered into by CCC under its price support operations and other CCC programs with persons in their capacity as producers and (2) the autority to suspend or debar is revised to the Executive Vice President, CCC, or his designee.

In order to expedite the review of the provisions of this proposed rule in light of potential CCC suspension and debarment proceedings, it has been determined that the comment period should be limited to a period of 30 days. Accordingly, comments must be received on or before February 19, 1985 in order to be assured of consideration.

List of Subjects in 7 CFR Part 1407

Administrative practice and procedure, Government contracts, Penalties.

Accordingly, it is proposed that 7 CFR Part 1407 be revised to read as follows:

PART 1407—SUSPENSION AND DEBARMENT

Sec.
1407.1 Purpose.
1407.2 Suspension and debarment.
1407.3 Scope.

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

§ 1407.1 Purpose.

This part prescribes the terms and conditions under which persons (i.e., an individual or any form of business entity, such as proprietorship, partnership, corporation, association, or cooperative) may be suspended and debarred from contracting with the Commodity Credit Corporation (CCC) and from otherwise participating in programs administered or financed by CCC.

§ 1407.2 Suspension and debarment.

The provisions of 41 CFR 4–1.600 *et seq.* shall be applicable to all CCC suspension and debarment proceedings, except that the authority to suspend or debar is reserved to the Executive Vice President, CCC, or his designee.

§ 1407.3 Scope.

CCC suspension and debarment proceedings, shall not be applicable to contracts entered into by CCC under its price support operations and other CCC programs with persons in their capacity as producers.

Signed At Washington, D.C. on January 11, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-1339 Filed 1-16-85; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Criteria for Reopening Records in Formal Licensing Proceedings

Correction

In FR Doc. 84-33644 beginning on page 50189 in the issue of Thursday, December 27, 1984, the word "Reports" appeared in the heading. The word "Records" should have appeared in its place. The heading is corrected to read as set forth above.

BILLING CODE 1505-01-M

10 CFR Part 60

Disposal of High-Level Radioactive Waste in Geologic Repositories; Amendments to Licensing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing revisions to procedures with respect to NRC reviews of license applications for disposal of high-level radioactive waste in geologic repositories. For the most part, the revisions reflect the provisions of the Nuclear Waste Policy Act of 1982, particularly as they relate to site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of disposal facilities.

DATES: Comment period expires March 18, 1985. Comments received after March 18, 1985 will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before that date.

ADDRESSES: Submit written comments and suggestions to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Division of Radiation Programs and Earth Sciences, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4586.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (Commission or NRC) in 1981 promulgated procedures for licensing Department of Energy (DOE) facilities for disposal of high-level radioactive wastes in geologic repositories (46 FR 13971, February 25, 1981). More recently, Congress has established a definite Federal policy for such disposal. Nuclear Waste Policy Act of 1982, Pub. L. 97–425, 42 U.S.C. 10101 (Waste Policy Act). Section 121 of the Waste Policy Act directs the Commission, not later than January 1, 1984, to promulgate technical requirements and criteria that it will apply in approving or disapproving license applications with respect to geologic repositories. The Commission has complied with this requirement by publishing final technical criteria (48 FR 28914, June 21, 1983). The Commission is now turning to

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a review of its previously adopted procedures. One objective is to reflect the provisions of the Waste Policy Act. In addition, however, the Commission is taking this opportunity to clarify its procedures in the light of experience gained over the past three years in consultations on the SCA reviews of DOE siting projects and in light of the extensive prelicensing interaction process now underway between NRC, the states, and DOE.

The principal aspects of the licensing procedures that the Commission has under review concern (1) the role of NRC during site screening and site characterization activities, (2) State, tribal, and public participation in NRC activities with respect to geologic repositories, (3) NRC responsibilities under the National Environmental Policy Act (NEPA), (4) procedures and standards for identifying categories of material as high-level radioactive wastes, and (5) changes, especially with respect to content of the license application, needed to conform the licensing procedures to the technical criteria.[1] The present rulemaking proposal deals with the first two of these topics; because the two are so intertwined they will be treated together.

Background

In 1974, when the Atomic Energy Commission's functions were divided between the Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission, Congress provided generally that ERDA high-level waste disposal facilities were to the subject to NRC's regulatory and licensing authority (42 U.S.C. 5842). NRC's role with respect to such facilities remained unchanged when the functions of ERDA were transferred in 1977 to the new Department of Energy (DOE) (42 U.S.C. 7151).

Although the Atomic Energy Act recognizes the interest of the States in the peaceful uses of atomic energy and the need for cooperation with the States with respect to the control of radiation hazards, the Federal government was authorized to regulate the disposal of high-level radioactive waste to protect public health and safety (42 U.S.C. 2021(c), 10 CFR 150.15). Nevertheless, the Act recognizes the need for cooperation with the States, 42 U.S.C. 2021(a), and it is Commission practice to consult with State and local governments on matters of common interest.[2]

Recognizing that further legislative guidance would help to define appropriate forms of consultation and cooperation, Congress in 1978 directed the Commission to prepare a report on means for improving the opportunities for State participation in the process for siting, licensing, and developing nuclear waste storage or disposal facilities. NRC Authorization Act for Fiscal Year 1979, Pub. L. 95-601, Sec. 14(b). After consultation with the States, the Commission submitted its report to Congress in 1979. *Means for Improving State Participation in the Siting, Licensing and Development of Federal Nuclear Waste Facilities*, NUREG-0539, reprinted in *Nuclear Waste Isolation Pilot Plant (WIPP): Oversight Hearings Before the Subcommittee on Oversight and Investigations of the House Comm. on Interior and Insular Affairs*, 96th Cong., 1st Sess. 514-601 (1979) (the NRC Report). The NRC Report, "Based on the premise that State involvement in any national nuclear waste management program is a critical element in making the program work," included several procedural and substantive recommendations.

The value of such State involvement—for the Commission as well as for the States—was emphasized as the NRC developed a framework for licensing geologic repositories for high-level radioactive waste (10 CFR Part 60). The first step in this process was the Commission's publication of a Proposed General Statement of Policy (43 FR 53868, November 17, 1978). This document contemplated that the Commission would make licensing determinations before DOE commenced construction of a repository shaft. DOE would be encouraged, however, to consult informally in advance with NRC staff. At this early stage, NRC would point out aspects of a location selected by DOE which might require special attention or present special problems and NRC would help to define the kinds of information needed for licensing decisions. As noted, repository construction (including sinking of the main repository shaft) would require licensing action. Site characterization would continue during repository construction, with the data to be reviewed before issuance of a license authorizing receipt of radioactive material. Upon commencement of NRC's informal review, NRC would publish a notice in the Federal Register, send copies of information submitted by DOE to State and local officials, and offer to meet with those officials to provide information and explore possibilities of their participation in the licensing process.

After soliciting and considering views, the Comission next proceeded to issue a proposed rule. One significant difference from the policy statement was that DOE would be permited to sink shafts and engage in site characterization activities at depth before formal licensing proceedings were commenced. DOE's site characterization plans would nevertheless be reviewed in considerable detail in advance, with opportunity for public comment on an NRC draft site characterization analysis. The proposed rule incorporated detailed provisions to ensure extensive opportunities for State and public participation. These procedures were "designed to allow affected States to participate to the fullest extent possible within the limits of the Commission's authority and the State's own desires and capabilities." The Commission observed, however, that "provisions for State participation would be reviewed in the light of any pertinent statutory changes that may be enacted." Moreover, it noted that the extent of State participation may be affected by legislative action on the matters discussed in the NRC Report (44 FR 70408, December 6, 1979).

The final rule added provisions with respect to notice to and participation by Indian tribes. However, inasmuch as public comments on the proposed rule pointed out no serious deficiencies in the opportunities for State and public participation, the provisions that had been proposed were adopted without material change (46 FR 13971, February 23, 1981).

Both the proposed rule and final rule contemplated that DOE would characterize several sites at depth.

[1] Issues pertaining to NEPA will require modifications to 10 CFR Part 51. Amendments to 10 CFR Part 51 to reflect the Waste Policy Act will be the subject of a subsequent rulemaking. However, actions which the Commission may take relative to environmental assessements required by the Waste Policy Act are discussed later in this statement. Consideration of the definition of HLW is reserved, and the Commission anticipates publication of an advance notice of proposed rulemaking on this topic in coming months. The content of applications section will be reviewed after issuance of DOE siting guidelines under the Waste Policy Act to take such guidelines into account if and as appropriate. The Commission would welcome suggestions from interested persons with respect to other changes that may be needed to reflect provisions of the Waste Policy Act.

[2] 42 U.S.C. 2021 is a codification of a 1959 statute which added a new Section 274 to the Atomic Energy Act of 1954. Section 274 established procedures and criteria for discontinuance of Federal regulatory responsibilities with respect to byproduct, source, and special nuclear materials and the assumption thereof by the States. However, under Section 274, the regulation of high-level waste disposal for safety reasons remained a Federal responsibility. *See Pacific Gas & Electric Co. v. Energy Commission*, 461 U.S. 190, 75 L.Ed.2d 752, 776 (1983).

primarily so as to enable the Commission to discharge its NEPA responsibilities with respect to evaluation of alternatives. With this in mind, DOE would have been required, as discussed below, to include information concerning its site selection process in its site characterization report to NRC.

The Existing Regulations

The principal aspects of the existing licensing procedures that are of present interest relate to (1) submission of DOE's site characterization report, (2) public notice of receipt of the site characterization report, (3) the preparation of a site characterization analysis by NRC, (4) consultation between NRC and States and Indian tribes, (5) participation in NRC reviews, and (6) procedures for the formal hearing process. It will be useful to review the present language of 10 CFR Part 60 with respect to these items before turning to the changes that we propose to adopt.

1. Site Characterization Report (§ 60.11)

NRC requires that DOE submit a site characterization report "as early as possible after commencement of planning for a particular geologic repository operations area, and prior to site characterization." Both the timing and required content of this report reflect the statutory directive in section 14(a) of the NRC Authorization Act for 1980, Pub. L. 95-601, which provides:

> Sec. 14(a) Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal.

The Commission, in proposing its licensing procedures, made specific reference to this statute and explained that its rule would "ensure that the notice from the Department will, in fact, initiate a meaningful, substantive review" (44 FR 70409). The site characterization report, together with the NRC staff assessment thereof and meetings between NRC staff and State officials and other interested persons, "assures an early opportunity for other Federal and State agencies and the public to become involved in the decision making process" with respect to DOE's site characterization and site selection programs. *Ibid.* The review process would provide NRC an opportunity to identify and consider a broad range of public concerns; this would assist NRC in the preparation of a comprehensive and reasoned analysis.

The site characterization report would include more than a description of the site and the program to be undertaken to characterize the ability of the site to achieve waste isolation. It would also discuss "the method by which the site was selected for site characterization . . . and . . . a description of the decision process by which the site was selected for characterization, including the means used to obtain public, Indian tribal and States views during selection." Alternative media and sites at which DOE intends to carry out site characterization would be identified. DOE's report on these topics would enable the Commission to consider whether additional information might be needed by the Commission in discharging its NEPA responsibilities (48 FR 13972).

2. Notice and Publication (§ 60.11)

As directed by section 14(a) of the 1980 NRC Authorization Act, NRC rules provide for notice to the Governor and the State legislature of the State of proposed situs whenever a site characterization report is received. Although not required to do so by law, NRC would also (1) transmit copies of the site characterization report to these addressees, (2) provide similar notice to local officials, tribal organizations, and Governors of contiguous States, and (3) publish in the Federal Register notice of receipt of the site characterization report which, among other things, will advise that governmental and Tribal officials may request consultation with NRC staff.

3. Site Characterization Analysis (§ 60.11)

The rules provide that NRC will review the site characterization report and prepare a draft site characterization analysis which discusses the information submitted by DOE, and that a request for public comment on the draft site characterization analysis is to be published in the Federal Register; copies are to be transmitted to the State and local officials and Tribal organizations who had previously received notice under the rule. It was anticipated that NRC would hold local public meetings in the immediate area of the site to be characterized, both to disseminate information and to obtain public input, but this is not an explicit requirement under the rule. After a comment period of at least 90 days, NRC would transmit a final site characterization analysis to DOE. As noted above, these procedures were designed to solicit comments that would assist NRC to prepare a comprehensive and reasoned analysis.

4. Consultation (§ 60.61, § 60.64(a))

Under Part 60, NRC staff would consult with State government and Tribal officials, on written request, to keep them informed of NRC views on the progress of site characterization and to notify them of NRC meetings and consultations with DOE. NRC would respond to written question or comments from these officials and transmit such responses to DOE. Consultation would not be limited to site characterization, but could include a review of NRC licensing procedures and the type and scope of State and Tribal activities in the license review permitted by law as well.

5. Proposals for State Participation (§§ 60.62-64)

The NRC Report (at 18-24, 27-28) distinguished between improvement of State participation in the NRC review process on the one hand and, on the other, the carrying out of an "independent State review" of a proposal to store or dispose of nuclear waste. The Report identified several avenues for State participation in NRC reviews that could be implemented under existing law. These included support from NRC in the form of educational or information services, exchange of personnel under the Intergovernmental Personnel Act, and contracts for technical services needed by the Commission. Besides the activities that could be carried out under existing law, the Report (at 28) recommended that the Congress "establish a grant program to allow the States to participate more fully in the Federal waste management program."

Part 60 provides for State participation in the review of a site characterization report and/or license application. A proposal initiated by the State would describe how the State wishes to participate in the review and how it plans to facilitate local government and citizen participation, and it would include funding estimates of work to be done under contract with the NRC. Subject to the availability of funds and legal constraints, NRC would approve State proposals that it finds will enhance communications with the State and contribute productively to NRC's license review.

Under the State participation provisions, proposals can be submitted by any State "potentially affected" by

the siting of a repository, even if the prospective repository site is in a different State. By the same token, Indian tribes "potentially affected" by the siting of a repository may submit proposals for participation in the same manner as the States.

b. Formal Licensing Procedures

The NRC rules provide that notice of specified events (docketing, hearing, proposed issuance of license, issuance of license) will be published in the Federal Register; there are additional specific requirements for notice to State and local officials (and to Tribal organizations if a repository is to be located within an Indian reservation). 10 CFR 2.101–2.106. Affected States and Indian tribes desiring to participate as a party to a licensing proceeding may petition for leave to intervene; and they may also participate in a more limited capacity as provided by the regulation. 10 CFR 2.714, 2.715.

The Needed Revisions

One of the purposes of the Waste Policy Act is to define the relationship between the Federal government and the State governments, and between the respective Federal agencies, with respect to the disposal of high-level radioactive waste. The Act prescribes in great detail procedures for DOE to consult and cooperate with the States (and affected Indian tribes) with respect to determining the suitability of an area for a repository and with respect to other issues arising in connection with the planning, siting, development, construction, operation, or closure of such a facility (Sec. 117, 42 U.S.C. 10137). DOE is directed to make initial grants to States with potentially acceptable sites for a repository and, subsequently, to provide further grants to any State in which there is a site approved for characterization (Sec. 116(c), 42 U.S.C. 10136). The latter grants are to enable the States, among other things, to review potential impacts of the repository upon the State and its residents and to provide information to such residents regarding the activities of DOE or the Commission with respect to the site. DOE is also directed to provide financial and technical assistance to a State in which a repository is to be located, after NRC has issued a construction authorization, in order to mitigate the impacts of development of the repository. *Ibid.* The Waste Policy Act also contains requirements that DOE hold public hearings at several stages of site selection and characterization (Sec. 112(b)(2), 42 U.S.C. 10132 (nomination); Sec. 113(b)(2), 42 U.S.C. 10133 (characterization); Sec. 114(a)(1), 42 U.S.C. 10134 (recommendation for development)). The designation of a site as suitable for application for a construction authorization will not be effective over State objections except pursuant to a Congressional resolution which thereafter becomes law (Sec. 115, 42 U.S.C. 10135).

The Waste Policy Act reconfirms the authority and responsibility of the Commission to review a specific repository proposal, pursuant to the Atomic Energy Act, in order to protect the public health and safety. The Waste Policy Act provides for Commission review prior to site characterization, as well as in a formal licensing proceeding, and for a Commission determination as to whether a repository of a particular design at a specified site will provide adequate isolation of radioactive waste. The Waste Policy Act makes no specific provision for the Commission to engage in, or independently review, the processes of site screening and selection. The Commission's only prescribed participation in this selection process comes in NRC's review and concurrence in guidelines for the recommendation of sites for repositories (Sec. 112(a), 42 U.S.C. 10132). However, the Commission will review DOE's draft environmental assessments as it would review any other information on site investigation and site characterization, in order to allow early identification of potential licensing issues for timely resolution. Reviews will be carried out in accord with the procedural agreement between NRC and DOE for interface during site investigation and site characterization.[3]

While the Waste Policy Act establishes new procedures for the high-level waste management program, the Commission remains entirely free to consult with the States and Indian tribes, at its own initiative or theirs, with respect to any matter pertaining to NRC's regulatory role. Although specific channels are established for States and Indian tribes to engage in consultation and cooperation with DOE, these cannot substitute for direct interaction with NRC with respect to this agency's functions. Nevertheless, an examination of the details of the Waste Policy Act highlights differences from Part 60 which need to be taken into account. In addition, there are some changes—particularly with respect to funding of State participation—that would have been desirable even in the absence of the new legislation. The need for revisions can be analyzed using the same heading as before.

1. Site Characterization Report

As is the case under the existing regulations, it is appropriate that the submission of information about a site and plans for characterization of the site should be the occasion for commencing NRC's initial substantive review. However, the Waste Policy Act specifies a number of actions DOE must take before such information is required to be submitted to NRC. Further, the Waste Policy Act calls for NRC to review information of narrower scope than that which, under 10 CFR Part 60, was to be included in the DOE site characterization report.

Under § 60.11, the site characterization report was to be furnished to NRC "as early as possible after commencement of planning" for a particular repository. In contrast, the Waste Policy Act requires that DOE first nominate several sites (after holding public hearings and consulting with the governors of affected States) and that particular locations would then be recommended as candidate sites which, if approved by the President, would be eligible for site characterization.

The new law marks this time—before DOE proceeds to sink shafts—as the point when the site characterization plan is submitted. When the Commission reviews this plan, the site to be characterized will already have been the subject of extensive scrutiny. It will have been described in an environmental assessment in which the siting guidelines are applied and will have been discussed at public meetings at which public comments will have been solicited and received. It also will have been reviewed by both DOE and the President in the course of the nomination approval process. Extensive data gathering programs may have been carried out in conjunction with these activities.

DOE may very well need to make choices and commitments in the course of such data gathering that could have a significant bearing upon the safety and licensability of a repository. The drilling of boreholes for testing purposes, for example, could affect the integrity of a

[3] Procedural Agreement between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy identifying guiding principles for interface during site investigation and site characterization. 48 FR 36701, August 25, 1983. The Procedural Agreement is designed to assure that an information flow is maintained to facilitate each agency's accomplishment of its responsibilities relative to site investigation and characterization. The Procedural Agreement also provides that DOE is to notify potential host States and affected Indian tribes of technical meetings between DOE and NRC technical staff and that DOE is to invite those States and tribes to attend. These technical meetings will be open meetings, with members of the public being permitted to attend as observers.

repository that might be constructed at the site. Close coordination between DOE and NRC is therefore needed prior to submission of the site characterization report so as to facilitate the early identification of issues of potential safety significance and so as to afford an opportunity for NRC to provide DOE with timely views.

Under the Waste Policy Act, the information which is to be submitted to the Commission for review and comment prior to site characterization is similar to existing § 60.11. Both Part 60 and the statute call for DOE to describe the site, the proposed site characterization activities, a conceptual repository design, and certain information with respect to waste form or packaging. However, several categories of information which were previously listed in § 60.11 are omitted under the Waste Policy Act from the required submission to NRC—notably, the method by which the site was selected for site characterization, the identification and location of alternative media and sites at which DOE intends to conduct site characterization, and a description of the decision process by which the site was selected for characterization (including the means used to obtain public, Indian tribal and State views during selection).

The Waste Policy Act still requires a discussion of the omitted items, but in a separate document called an environmental assessment (Sec. 112(b)(1), 42 U.S.C. 10132). The preparation of an environmental assessment is to be preceded by public hearings held by DOE and consultation by DOE with governors of affected States. *Ibid.* Although not required to do so by the Waste Policy Act, DOE intends to make environmental assessments in draft form available for public comment. All this occurs in connection with the nomination of a site prior to Presidential review and approval of a candidate site for site characterization.

The Waste Policy Act makes no provision for the Commission to comment to DOE on its environmental assessments or otherwise to participate in the nomination process. It is nevertheless the intention of the Commission to review and comment on the environmental assessments, as well as other technical documents being prepared by DOE, in order to assess on a continuing basis the information collected to date and the program for the development of additional information for a potential license application. However, the NRC staff would not comment upon the methodology used by DOE to compare sites or upon the relative merits of one site against another. Such a review by NRC is not necessary to fulfill any of its statutory responsibilities. Moreover DOE will be selecting sites using guidelines in which the NRC will have already concurred. We regard it as appropriate, however, and fully consistent with the objectives of the Waste Policy Act, for the NRC staff to provide to DOE current expressions of its views on the quality of the data available and the potential licensing issues that may be anticipated and that may need to be addressed in DOE's site investigation and site characterization activities.

In view of the foregoing considerations, § 60.11 needs to be revised to change both the timing and content of the DOE site characterization report to conform to the Waste Policy Act. Despite these changes, however, the Commission plans to be involved at earlier stages in reviewing data collected by DOE as well as its programs for gathering additional data. The instrument for accomplishing this—namely, the Procedural Agreement referred to above—is already in place and is being implemented routinely.

2. Notice and Publication

The Waste Policy Act provides that: "Before nominating a site, the Secretary [of Energy] shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination" (Sec. 112(b)(1)(H), 42 U.S.C. 10132). Later, after public hearings and a prescribed review process involving Presidential approval, DOE must submit site characterization plans to those same officials, for review and comment; concurrently, DOE is required to submit such plans to NRC (Sec. 113(b)(1), 42 U.S.C. 10133). Although publication of notice in the Federal Register is not required expressly, DOE must make both the environmental assessment and the site characterization plan "available to the public" (Secs. 112(b)(1)(G), 113(b)(2)(A), 42 U.S.C. 10132–33). The Commission anticipates that DOE will give notice in the Federal Register as the means for assuring adequate public availability of these documents.

Since DOE is required to make its site characterization plan available to State and tribal officials and to the public, duplicative provisions may be removed from Part 60. Even so, however, it makes sense for the Commission to publicly acknowledge receipt of DOE's submission so as to provide notice of the opportunity for consultation thereon with the NRC staff.

3. Site Characterization Analysis.

The Waste Policy Act requires, before DOE proceeds to sink shafts at a candidate site, that DOE submit its site characterization plans to NRC (as well as State and tribal officials) for review and comment (Sec. 113(b), 42 U.S.C. 10133). The Commission believes that Congress intended that DOE should provide the plans sufficiently far in advance so that comments may be developed and submitted back to DOE early enough to be considered when shaft sinking occurs, and at all time thereafter. As explained above, this implies an ongoing working relationship with DOE to assure that its data and assessments are made available to NRC as they are developed. As already mentioned, NRC and DOE have, in fact, developed a Procedural Agreement under which NRC is to have access to information as it is generated and, equally important, NRC is to comment regularly to DOE with respect to this information.

Thus, the Commission expects that the principal means of evaluation will be the interagency process that begins early in DOE's consideration of a site. When investigations have progressed far enough to warrant sinking of shafts, it is our expectation that NRC will already be adquately informed with respect to data generated to date and that NRC's concerns would already have been focused and brought to the attention of DOE. Assuming this to be the case, NRC should be in a position to complete its review and provide comments to DOE, as required by the Waste Policy Act, in a prompt fashion. The site characterization analysis would be a continuing dynamic process, better suited for ongoing public input and NRC review, rather than "freezing" the comment and review process at one arbitrary point in time.

An ongoing public review process would also facilitate DOE's ability to obtain comments on its site characterization plan from the States and Indian tribes as well. The Waste Policy Act affords an opportunity for these entities to enter into written agreements with DOE specifying procedures for consultation and cooperation that could include early review. Moreover, the NRC/DOE Procedural Agreement assures that States and Indian tribes will have an opportunity to be informed routinely concerning the information made available to NRC and NRC's comments

thereon and to attend NRC/DOE technical meetings.

Under existing 10 CFR Part 60, DOE's submission of site characterization plans was to occur, as already noted, "as early as possible after commencement of planning" for a particular repository. There was no assurance that either NRC or other interested parties would have had prior information about the site or any opportunity to make concerns known to DOE. It was in this context that the Commission determined that NRC would prepare a draft site characterization analysis for public review and comment before developing a statement of the agency's views for consideration by DOE.

Under the Waste Policy Act, however, DOE's submission comes after an extensive period of interaction between DOE and the States, affected Indian tribes, and the public, and after Presidential review and approval of the sites recommended for characterization. By the time a site characterization plan is to be submitted for review and comment, there should have been ample opportunity for NRC to have become acquainted with both DOE's programs and the public's concerns. Since technical meetings under the Procedural Agreement will be open, interested parties will have an opportunity to follow the course of NRC activities and to bring their concerns to the attention of NRC. Further opportunities for public involvement are provided by law, since DOE must also seek the comments of the States and tribes, and hold public hearings in the vicinity of the site. For these reasons, together with the scheduling mandates of the Waste Policy Act, the Commission believes it is no longer necessary to prepare a draft site characterization analysis on which public comment is sought. The Commission particularly asks for views on this proposed change.

It should be emphasized, however, that NRC will have been engaged in an ongoing review of DOE's activities even before submission of a site characterization plan and that the comments of interested parties may be submitted at any time for consideration as a part of that review process.

4. Consultation

Under the Waste Policy Act, the Commission is directed to provide "timely and complete information regarding determinations or plans made with respect to site characterization, siting, development, design, licensing, construction, operation, regulation, or decommissioning" of a repository, Sec. 117, 42 U.S.C. 10137, but this affords no rights to States and Indian tribes beyond those already provided in law. H.R. Rep. 97-785, Part I at 74. The proposed amendments contain conforming language implementing this requirement. The Waste Policy Act charges DOE with the responsibility to "consult and cooperate" with the States and Indian tribes in an effort to resolve their concerns about the safety, environmental, and economic impacts of a repository. States may make comments and recommendations to DOE regarding any activities taken under this subtitle," and this may be funded by grants from DOE (Sec. 116(c)(1)(B)(v), 42 U.S.C. 10136). DOE is directed to take State and Indian concerns into account "to the maximum extent feasible" (Sec. 117(b), 42 U.S.C. 10137). Accordingly, in expectation that States and tribes will communicate directly with DOE with respect to its site characterization plans, the provision that the Director will respond to questions and comments of the States and tribes on DOE's plans has been deleted.

However, the Commission has consistently expressed its intention to maintain a dialogue with the States, Indian tribes, and members of the public. This intention is unchanged. The scope of such dialogue may appropriately extend to any issue which must be considered and resolved by NRC in the discharge of its licensing responsibilities.

5. Proposals for State Participation

Subpart C of 10 CFR Part 60 provides for the filing of proposals by States and Indian tribes for participation in reviews of site characterization reports and license applications. In response to such proposals, NRC would consider providing certain educational or information services and funding work that the State proposes to perform for the Commission, under contract, in support of the review.

With enactment of the Waste Policy Act, authority to fund a broad variety of State activities, including grants to enable a State "to review activities . . . for purposes of determining any potential economic, social, public health and safety, and environmental impacts" of a repository has been vested in DOE. Sec. 116(c)(1)(B)(i), 42 U.S.C. 10136; see also Sec. 118(b)(2)(A)(i) (pertaining to affected Indian tribes). The scope of NRC assistance available may be limited by this statutory direction. However, other elements of Commission support would not be affected as explained in greater detail in the section-by-section analysis below.

6. Formal Licensing Procedures

The Waste Policy Act incorporates the basic licensing structure which had been described in the Commission's regulations. It expressly provides for consideration of a DOE application, subject to certain deadlines, "in accordance with the laws applicable to such applications" (Sec. 114(d), 42 U.S.C. 10134). Affected States and Indian tribes will be entitled to participate in the licensing proceedings.

The new requirement that DOE and NRC provide timely and complete information to the States and tribes, Sec. 117(a), 42 U.S.C. 10137, would apply to significant milestones in the formal adjudicatory process. The rule presently reflects this, and the Commission finds no need to modify the formal regulatory structure for licensing activities at geologic repositories.

Section-by-Section Analysis

In light of the foregoing considerations, the Commission is proposing to revise its licensing procedures with respect to disposal of high-level waste in geologic repositories. The following section-by-section analysis provides additional explanatory information. All references are to Title 10, Chapter I, Code of Federal Regulations. Other revisions, including changes that may be needed to conform with the Waste Policy Act's provisions for environmental reviews, will be the subject of separate rulemaking.

10 CFR Part 60, Subpart A

Section 60.2 Definitions.

The terms "Indian Tribe" and "Tribal organization" would no longer appear in Part 60 and the definitions of the terms have therefore been deleted. The term "affected Indian tribe," as defined in the Waste Policy Act, is the proper designation for those entities that are entitled to notice and other recognition under the rule. The proposed rule incorporates the statutory definition of "affected Indian tribe."

10 CFR Part 60, Subpart B

The sections in this subpart have been renumbered so as to allow for insertion of additional general provisions, if needed, at a future date.

Section 60.15 [formerly § 60.10] Site characterization.

No change.

Section 60.16-18 [formerly § 60.11].

The former section § 60.11, captioned "Site characterization report," has been

revised to conform to the Waste Policy Act. It has been divided into three sections in order to provide a clearer editorial structure.

The "site characterization report" has been changed to a "site characterization plan." Note that this includes more than DOE's "general plan for site characterization activities:" conforming to Sec. 113(b). 42 U.S.C. 10133. it must also incorporate information on waste form and packaging as well as a conceptual repository design. The change from "report" to "plan" better conveys to sense that DOE is describing a program to obtain information which can be used later to evaluate a site. as opposed to a presentation of data which would allow a preliminary judgment as to site acceptability. The NRC review process at this stage is not directed to advising DOE whether or not the site is or is not satisfactory, but rather whether or not the characterization program (1) will generate data needed for arriving at subsequent licensing determinations and (2) will adversely and significantly affect the ability of the geologic repository to achieve the prescribed performance objectives.

Section 60.16 Site characterization plan required.

The requirement for DOE to submit a site characterization report appeared in § 60.11(a). As before. the document (now a "plan") is to be submitted to the Director of NRC's Office of Nuclear Material Safety and Safeguards. The purpose of the submission ("for review and comment") is derived from the Waste Policy Act. Similarly. the timing of the submission ("before proceeding to sink shafts") reflects the new statutory direction.

The regulation refers to characterization at any area which has been approved by the President for site characterization. Such an area would be a "candidate site" as defined in the Waste Policy Act. The regulation avoids that term. however. because it already defines "site" in a different way.

Section 60.17 Contents of site characterization plan.

This section restates. with minor changes. the information which the Waste Policy Act requires to be submitted to the Commission for review and comment.

Because Part 60 defines high-level radioactive waste to include spent nuclear fuel. the latter category of material is not referred to in § 60.17.

Cor sistent with other provisions of Part 60. the term "geologic repository operations area" (rather than "geologic repository" or "repository") is employed when the context pertains to the area in which waste handling activities are conducted.

Part 60 defines "host rock" as "the geologic medium in which the waste is emplaced." Accordingly. the rule refers to the waste-host rock relationship instead of the relationship of the waste form or packaging and the geologic medium. The statute's reference to the "packaging" for the waste corresponds to Part 60's "waste package." and the proposed rule retains the latter term for purposes of consistency.

The Waste Policy Act requires DOE to include in its general plan for site characterization activities "any other information required by the Commission." The Commission has so far identified only one such item—namely information with respect to quality assurance. Other information may hereafter be found to be needed to enable the Commission to determine whether the proposed site characterization activities are appropriate: if so. the Commission would establish its requirement either by rule (particularly if the information would be valuable on a generic basis) or by order in a particular case. Although the Commission's obligations to observe the statutory schedule must be heeded. there is no reason in principle why the submission of other information could not be ordered even after the site characterization plan had been filed. if required for the Commission to discharge its review and comment responsibilities effectively.

The Waste Policy Act's reference to plans to control any adverse. "safety-related" impacts from site characterization activities can be traced to former § 60.11(a)(6)(iii). The Commission's concern originally was that DOE address those aspects of site characterization that (1) could be significant with respect to radiological safety prior to permanent closure or (2) could affect the ability of the repository to satisfy the performance objectives pertaining to waste isolation. The proposed rule contains language that reflects this construction of the statute.

The Commission recognizes that the requested level of detail is not spelled out precisely. Such items as "a description of the area" and "a conceptual design for the geologic repository operations area that takes into account likely site-specific requirements" must not be read in isolation. They must be understood to require sufficient detail for the Commission and other statutory reviewers to be able to comment in an informed manner. So construed. the Commission believes that they are sufficiently clear. should additional information be needed. the Commission would retain the option. by order. to require further submissions.

As noted. the Commission has included an explicit statement that the site characterization plans should spell out DOE's quality assurance programs. Existing § 60.11 includes such language. but it was not included in the counterpart provision of the Waste Policy Act. However. since a principal aim of site characterization is to develop data that have been obtained and documented in a fashion which will support licensing findings. the NRC review should be concerned with the approach which DOE is taking to data collection. recording. and retention as well as to the content of the information which DOE seeks to assemble. Because of the importance it attaches to this item the Commission considers an explicit requirement for submission of information on quality assurance programs to be necessary.

We have also incorporated the statutory requirement that DOE is to include in its general plan a statement of the criteria to be used to determine suitability of the site for the location of a repository. Because site characterization will be a prerequisite for application of some guidelines. see Sec. 112(b)(1)(E)(ii). 42 U.S.C. 10132. we anticipate that the site characterization plan will also include a description of how DOE will use the information gathered during site characterization to determine if the site suitability guidelines are met.

The Waste Policy Act applies only with respect to geologic repositories that are used. at least in part. for the disposal of wastes from civilian nuclear activities. Sec. 8. 42 U.S.C. 10108. If DOE were to develop a facility exclusively for wastes from atomic energy defense activities. it would nevertheless be subject to licensing by NRC under the Energy Reorganization Act. The Commission has considered whether the changes proposed herein. which are largely responsive to the Waste Policy Act. would be appropriate with respect to such defense facilities. It appears that the Commission. acting under amended Part 60. could still effectively discharge its health and safety responsibilities for such defense waste facilities. But. in this section. the provisions that prescribe the contents of the site characterization plan need to recognize that defense-only facilities would not have any applicable siting criteria "developed pursuant to Section 112(a) of the Nuclear Waste Policy Act"; instead. in that case. the rule requires that the site

characterization plan set out the siting criteria actually used by DOE.

On environmental matters, the situation is more complex. The Waste Policy Act limitations with respect to the scope of the Commission's environmental responsibilities under NEPA—which we would implement in the modified procedures at the site characterization stage—would not apply to a repository used solely for defense wastes. Accordingly, the Commission would expect to require that DOE submit, with its site characterization plan for a defense facility, those items of information with respect to site screening and selection that appear in existing § 60.11(a) but which are not included in this proposed rule. Because the information relates to implementation of NEPA, it would be incorporated in revised 10 CFR Part 51 rather than Part 60.

Section 60.18 Review of site characterization activities.

As under existing § 60.11(b), the Commission will publish notice of receipt of DOE's site characterization plan. Although this may duplicate information published by DOE, it will serve to identify, to anyone interested, appropriate points of contact within the NRC staff. Since alternative areas are not required to be identified in the site characterization plan, the proposed rule omits any reference to such areas. Language pertaining to consultation has been revised to conform with proposed Subpart C.

Similarly, notwithstanding duplication of notice by DOE, the Commission will give direct notice to State and tribal officials concerning receipt of DOE's site characterization plan. Under the proposed rules, this information would be furnished to the officials entitled to timely and complete information under the Waste Policy Act. Because such officials would already have received copies of the site characterization plans from DOE, the notice from the Commission would not be accompanied by additional copies thereof. However, a copy of the site characterization plan would be placed in the pubic Document Room. (Existing § 60.11 would require local officials, and also the governors of contiguous States, to be afforded notice from NRC. This requirement has been deleted in the light of the new statutory provisions.)

For the reasons set out in the discussion above, the proposed rule omits the mandatory draft site characteeization analysis described in existing § 60.11. However, the proposed rule does provide that the Director may invite and consider comments on DOE's site characterization plan and that he may also review and consider the comments made in connection with the public hearings which Doe's is required to hold. Moreover, the Director will publish a notice of availability of a site characterization analysis and will invite host States, affected Indian tribes and all other interested persons to review and comment thereon. Comments received in respone to such invitation will be reviewed by the Director; and where the Director determines that there are substantial new grounds for making recommendation or stating objections to DOE's site characterization program, these concerns will be expressed to DOE.

The Director's review of the site characterization plan is substantially equivalent to the final site characterization analysis prescribe by existing § 60.11. The reference to the Director's "comments" reflects the Waste Policy Act provision that the information is submitted to the Commission for "review and comment." The proposed rule refers to a "statement" of objections by the Director, instead of a Director's "opinion" of objections by the Director, instead of a Director's "opinion"; the later term was unnecessarily equivocal. It is intended that the objections would be directed at the nature of the site characterization activities being proposed and not to the suitability of the site as such; of course, if it appeared that a particular site exhibited such a profound deficiency that it could not be compensated for adequately in the light of data from any site characterization program, the Director could object to the program in its entirety, but the Commission regards this as highly improbable given the procedures prior to submission of a site characterization plan to NRC specified in the Waste Policy Act.

The inclusion of a finding with respect to the necessity of using radioactive material implements the specific direction in Section 113(c)(2)(A), 42 U.S.C. 10133; the Commission has previously concluded that the use of source, special nuclear, and byproduct material for purposes of site characterization does not require a license, 10 CFR § 60.7, and there is no reason to believe that the Waste Policy Act was intended to change this view.

Since DOE is not required to prepare an environmental impact statement with respect to site characterization, see Sec. 113(d), 42 U.S.C. 10133, the references in references in existing § 60.11 to such statement have been omitted. A footnote to the text of the rule points out, however, that DOE's environmental assessments will be reviewed—as other DOE documents will be—for the purpose of early identification of potential licensing issues for timely resolution.

The Waste Policy Act requires the DOE report to the Commission (and to State and tribal authorities) at least semiannually on the nature and extent of site characterization activities and the information developed from such activities. The same concerns were addressed in existing § 60.11(g). The Commission believes the two formulations are essentially the same, but that the more detailed version in the NRC regulation provides a clearer statement of the information that is needed. Accordingly, the proposed rule conforms closely to the Commission's earlier rule. The most significant change, reflecting the adption of a statutory directive to DOE, is that the provisions are now expressed in mandatory ("shall") terms. Also, the existing rule includes a provision for submission of additional reports on any topic, if requested by the Director; as modified, such other topics must still be covered as requested by the Director, but the information may be included in the semiannual reports instead of "additional" ones. The Director will review the semiannual reports and, where appropriate on the basis of new information contained therein, the Director will make recommendations or state objections with respect to DOE's site characterization program.

The proposed rule provides for the Director to transmit to State and tribal officials copies of all comments made to DOE under § 60.18. This includes not only the site characterization analysis and comments on the site characterization plan, but also any other comments which the Director chooses to make by way of "expressing current views." Other correspondence between NRC and DOE will be placed in the Public Document Room, but will not routinely be distributed to the designated officials. The omission of the requirement that the Director consider comments received from States in accordance with § 60.61 conforms to the changes in Subpart C. Sech comments may, however, be solicited and reviewed as appropriate in individual cases and, as noted, comments on the site characterization analysis will be invited and will be reviewed, and such review may be the basis for the director to express to DOE additional recommendations or objections.

Except for some editorial changes, othe provisions of §60.18 are the same as existing regulations.

10 CFR Part 60, Subpart C

This subpart deals with participation by State governments and Indian tribes in the Commission's licensing and pre-licensing activities. The role of the States and tribes in repository siting and development is addressed in great detail by several provisions in the Nuclear Waste policy Act. While the Commission finds that some changes in Subpart C are needed in light of those provisions, it remains our intention to encourage close working relations with the States and tribes. The revisions and designed to clarify the means by which this can be accomplished in a manner conforming to the new law.

Section 60.61 Provision of Information.

This section implements the requirement in the Waste Policy Act, Sec. 117(a), 42 U.S.C. 10137, that NRC furnish timely and complete information to host States and affected Indian tribes regarding its determinations or plans. It applies, insofar as Commission responsibilities are concerned, from the time a site characterization proposal is submitted throughout the entire life of the repository through "decommissioning." Consistent with other usage in Part 60, the phrase "permanent closure, or decontamination and dismantlement of surface facilities" is used instead of the statutory term "decommissioning."

Some of the most significant communications may consist of determinations made in the course of licensing proceedings. Under our rules of practice, parties on the service list in such proceedings are required to be served with notice of all relevant pleadings, decisions, order, etc. Accordingly, the Commission will use this established procedure as the means for providing information regarding licensing actions.

Section 60.62 Site review.

The Waste Policy Act establishes a structure for the involvement of States and affected Indian tribes. The proposed rule therefore provides explicitly for consultation with States and affected Indian tribes but omits mention of local governments. (However, the Commission anticipates, in light of the Waste Policy Act, see Sec. 116(c)(1)(B)(iv), 42 U.S.C. 10136, that the States would establish appropriate procedures to address local government and citizen concerns.)

Since the concerns of the States and affected Indian tribes will be dealt with primarily under the statutory consultation and cooperation procedures, the Commission has eliminated reference to any consultation activities by NRC that are more appropriately and directly carried out by DOE under those procedures. Thus, consistent with the Waste Policy Act, questions concerning DOE's site characterization submissions should be directed to DOE for its consideration and response, and notification concerning NRC meetings or consultations with DOE should be provided by DOE. Notwithstanding these changes, however, it remains the policy of the Commission that consultation with interested parties with respect to site characterization should be encouraged. As now, information would be available routinely with respect to NRC's views on the progress of site characterization, on NRC procedures, and on the development of proposals for participation in license reviews.

Although the Waste Policy Act does not provide formally for NRC activity prior to Presidential approval of an area for site characterization, and this is noted in revised § 60.62, there will be coordination during the earlier stages of site screening and site characterization in accordance with the Procedural Agreement between NRC and DOE; special provisions has been made in that agreement for States and Indian tribes to receive notice and to attend NRC/DOE meetings so as to enable them to engage knowledgeably, on an early and ongoing basis, in site characterization reviews.

The opportunity to request that the Director consult with respect to the NRC review of site characterization activities is not limited to prospective host States. The extent to which a State may be affected by the prospective location would, of course, be a factor for the Director to consider in determining the staff resources that would be made available for purposes of such consultation.

Section 60.63 Participation in license reviews.

This section is a substitute for the earlier §§ 60.62–60.65.

Section 60.63 acknowledges, first of all, that State and local governments and affected Indian tribes may participate in license reviews as provided in the Commission's rules of practice. Local governments are mentioned in this context because they may have standing, apart from the State in which they are located, to participate in a licensing proceeding as a party or participate in a more limited capacity. See 10 CFR 2.714, 2.715(c).

The regulation retains a provision for a State or affected Indian tribe to submit a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The existing requirement that proposals be submitted no later than 120 days after docketing of a license application has been eliminated; although early submissions are desirable, we can readily conceive of cases in which proposals submitted after review of a license application could be implemented in the mutual interests of the proposing entity and the Commission. The types of services or activities that NRC might consider providing would include those educational or information services and related actions that are set out in existing § 60.62(d).

The Commission has omitted those portions of existing § 60.62(c) that contemplate Commission funding of State work in support of the license review. In light of the Waste Policy Act, funding of such work to improve the State's capacity to review a license application is a responsibility of DOE and it is to be financed out of the Nuclear Waste Fund. We do not rule out the possibility that the NRC may contract with State governments on occasion for particular services that we may require in order to be able to discharge our statutory responsibilities effectively. The execution of such contracts would be carried out under established procurement procedures and would be subject to applicable limitations with respect to competitive bidding and avoidance of conflicts of interest. See 41 CFR Chapter I (Federal Procurement Regulations). A further reason for handling such contracts under the general procurement regulations rather than Part 60 is that the criteria for approval of proposals (existing § 60.63, proposed § 60.63(d)) would be inappropriate when the Commission's purpose is to acquire services which it needs in discharging its own reviewing functions.

Considering this limitation of the scope of NRC activities under Subpart C, the requirement for gubernatorial approval of a State proposal has been eliminated as being unnecessary. The information required to be included in the proposal has also been modified to conform to the limitation of scope. The Waste Policy Act may have further limited the opportunities for states to receive funding from the NRC, the Commission is of the view that Congress intended that DOE should assume the Federal responsibility for activities of the types described in Sections 116 and 118 and that such activities should be

financed out of the Nuclear Waste Fund rather than out of NRC appropriations.

Existing § 60.64, pertaining to participation of Indian tribes, has been incorporated in the substantive provisions applicable to States. The change has been made for editorial reasons and is not intended to affect the right of affected Indian tribes to participate like the States in the activities described in Subpart C.

Existing § 60.65, dealing with coordination of multiple proposals, has been deleted. The Commission deems it unlikely that multiple proposals of the kinds considered eligible for acceptance under Subpart C would present any undue administrative difficulties; the criteria for approval of proposals (especially the finding of "productive contribution" to the license review) would afford the Director adequate discretion to take into account the desirability of avoiding duplication.

Section 60.64 Notice to States.

The Commission encourages the Governor and legislature of a State to jointly designate a single point of contact to receive notice and information from the Commission. This section provides for notice to such jointly designated nominees.

Section 60.65 Representation.

Under the present rule, the signature of the Governor would serve to document the authority pursuant to which proposals were being submitted to the Commission. Submissions by Indian tribes were to be accompanied by documentation of the eligibility of the tribe and the authority of its representatives. This section is designed to retain the principle of assuring that representatives are properly identified. With respect to States, a change is needed to reflect the fact that proposals will no longer need to be signed by the Governor. In the case of Indian tribes, the determination by the Secretary of the Interior that it is "affected" eliminates the need for the Commission to be concerned with its eligibility.

Commissioner Asselstine's Additional Views

Commissioner Asselstine would retain the present requirement in 10 CFR 60.11 for NRC review of the site screening and selection process which DOE must now include in the environmental assessments. He would cite as the Commission's authority to review the draft environmental assessments the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and the Nuclear Waste Policy Act of 1982, and not just the NRC/DOE Procedural Agreement.

Commissioner Asselstine would also retain the present requirement in 10 CFR 60.11 for NRC issuance of the draft site characterization analyses for public comment.

Commissioner Asselstine would appreciate comment on whether these two elements should be retained in the Commission's regulations.

Environmental Impact

Pursuant to section 121(c) of the Nuclear Waste Policy Act, this proposed rule does not require the preparation of an environmental impact statement under section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of section 102(2) of such act.

Paperwork Reduction Act Statement

This proposed rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule relates to the licensing of only one entity, the U.S. Department of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

List of Subjects in 10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

Issuance

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the Nuclear Regulatory Commission proposes to adopt the following amendment to 10 CFR Part 60.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for Part 60 continues to read as follows:

Authority—Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97–425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of Sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.71 to 60.75 are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201o)).

2. Section 60.2 is revised by removing the definitions of "Indian tribe" and "Tribal organization" and inserting, in the appropriate alphabetical location, a definition of the term "affected Indian tribe" to read as follows:

§ 60.2 Definitions.

As used in this part—

* * * * *

"Affected Indian tribe" means an affected Indian tribe as defined in the Nuclear Waste Policy Act of 1982.

* * * * *

§ 60.10 [Redesignated as § 60.15]

3. Section 60.10 is Redesignated § 60.15.

§ 60.11 [Removed]

4. Section 60.11 is Removed.

5. Sections 60.16 through 60.18 are added to read as follows:

§ 60.16 Site characterization plan required.

Before proceeding to sink shafts at any area which has been approved by the President for site characterization, DOE shall submit to the Director, for review and comment, a site characterization plan for such area.

§ 60.17 Contents of site characterization plan.

The site characterization plan shall contain—

(a) A general plan for site characterization activities to be conducted at the area to be characterized, which general plan shall include—

(1) A description of such area, including information on quality assurance programs that have been applied to the collection, recording, and retention of information used in preparing such description.

(2) A description of such site characterization activities, including the following—

(i) The extent of planned excavations:

(ii) Plans for any onsite testing with radioactive or nonradioactive material:

(iii) Plans for any investigation activities that may affect the capability of such area to isolate high-level radioactive waste;

(iv) Plans to control any adverse impacts from such site characterization activities that are important to safety or that are important to waste isolation: and

(v) Plans to apply quality assurance to data collection, recording, and retention.

(3) Plans for the decontamination and decommissioning of such area, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities, if such area is determined unsuitable for application for a construction authorization for a geologic repository operations area:

(4) Criteria, developed pursuant to section 112(a) of the Nuclear Waste Policy Act of 1982 (or in the case of a geologic repository that is not subject to the Waste Policy Act, such other siting criteria as may have been used by DOE), to be used to determine the suitability of such area for the location of a geologic repository; and

(5) Any other information which the Commission, by rule or order, requires.

(b) A description of the possible waste form or waste package for the high-level radioactive waste to be emplaced in such geologic repository, a description (to the extent practicable) of the relationship between such waste form or waste package and the host rock at such area, and a description of the activities being conducted by DOE with respect to such possible waste form or waste package or their relationship; and

(c) A conceptual design for the geologic repository operations area that takes into account likely site-specific requirements.

§ 60.18 Review of site characterization activities.[1]

(a) The Director shall cause to be published in the Federal Register a notice that a site characterization plan has been received from DOE and that a staff review of such plan has begun. The notice shall identify the area to be characterized and the NRC staff members to be consulted for further information.

(b) The Director shall make a copy of the site characterization plan available at the Public Document Room. The Director shall also transmit copies of the published notice of receipt to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. In addition, the Director shall make NRC staff available to consult with States and affected Indian tribes as provided in Subpart C of this part.

(c) The Director shall review the site characterization plan and prepare a site characterization analysis with respect to such plan. In the preparation of such site characterization analysis, the Director may invite and consider the views of interested persons on DOE's site characterization plan and may review and consider comments made in connection with public hearings held by DOE.

(d) The Director shall provide to DOE the site characterization analysis together with such additional comments as may be warranted. These comments shall include either a statement that the Director has no objection to the DOE's site characterization program, if such a statement is appropriate, or specific objections with respet to DOE's program for characterization of the area concerned. In addition, the Director may make specific recommendations pertinent to DOE's site characterization program.

(e) If DOE's planned site characterization activities include onsite testing with radioactive material, the Director's comments shall include a determination regarding whether or not the Commission concurs that the proposed use of such radioactive material is necessary to provide data for the preparation of the environmental reports required by law and for an application to be submitted under § 60.22 of this part.

(f) The Director shall publish in the Federal Register a notice of availability of the site characterization analysis and a request for public comment. A reasonable period, not less than 90 days, shall be allowed for comment. Copies of the site characterization analyses and of the comments received shall be made available at the Public Document Room.

(g) During the conduct of site characterization activities, DOE shall report not less than once every six months to the Commission on the nature and extent of such activities and the information that has been developed and on the progress of waste form and waste package research and development. The semiannual reports shall include the results of site characterization studies, the identification of new issues, plans for additional studies to resolve new issues, elimination of planned studies no longer necessary, identification of decision points reached and modifications to schedules where appropriate. DOE shall also report its progress in developing the design of a geologic repository operations area appropriate for the area being characterized, noting when key design parameters or features which depend upon the results of site characterization will be established. Other topics related to site characterization shall also be covered if requested by the Director.

(h) During the conduct of site characterization activities, NRC staff shall be permitted to visit and inspect the locations at which such activities are carried out and to observe excavations, borings, and in site tests as they are done.

(i) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization. In particular, such comments shall be made whenever the Director, upon review of comments invited on the site characterization analysis or upon review of DOE's semiannual reports, determines that there are substantial new grounds for making recommendations or stating objections to DOE's site characterization program.

(j) The Director shall transmit copies of the site characterization analysis and all comments to DOE made by him under this section to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. When transmitting the site characterization analysis under this paragraph, the Director shall invite the addressees to review and comment thereon.

(k) All correspondence between DOE and the NRC under this section, including the reports described in paragraph (g), shall be placed in the Public Document Room.

(l) The activities described in paragraphs (a) through (k) above constitute informal conference between a prospective applicant and the staff, as described in § 2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as

[1] In addition to the review of site characterization activities specified in this section, the Commission contemplates an ongoing review of other information on site investigation and site characterization, in order to allow early identification of potential licensing issues for timely resolution. This activity will include, for example, a review of the environmental assessments prepared by DOE at the time of site nomination. A procedural agreement covering NRC-DOE interface during site investigation and site characterization has been published in the Federal Register, 48 FR 38701, August 25, 1983.

amended. Accordingly, neither the issuance of a site characterization analysis nor any other comments of the Director made under this section constitute a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safty and Licensing Boards, other presiding officers, or the Director, in any such proceeding.

8. Subpart C is revised to read as follows:

Subpart C—Participation by State Governments and Indian Tribes

§ 60.61 Provision of information.

(a) The Director shall provide to the Governor and legislature of any State in which a geologic repository operations area is or may be located, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made by the Commission with respect to the site characterization, siting, development, design, licensing, construction, operation, regulation, permanent closure, or decontamination and dismantlemenmt of surface facilities, of such geologic respository operations area.

(b) For purposes of this section, a geologic repository operations area shall be considered to be one which "may be located" in a State if the location thereof in such State has been described in a site characterization plan submitted to the Commission under this part.

(c) Notwithstanding paragraph (a), the Director is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(d) Copies of all communications by the Director under this section shall be placed in the Public Document Room, and copies thereof shall be furnished to DOE.

§ 60.62 Site review.

(a) Whenever an area has been approved by the President for site characterization, and upon request of a State or an affected Indian tribe, the Director shall make NRC staff available to consult with representatives of such States and tribes.

(b) Requests for consultation shall be made in writing to the Director.

(c) Consultation under this section may include:

(1) Keeping the parties informed of the Director' views on the progress of site characterization.

(2) Review of applicable NRC regulations, licensing procedures, schedules, and opportunities for state participation in the Commission's regulatory activities.

(3) Cooperation in development of proposals for State participation in license reviews.

§ 60.63 Participation in license reviews.

(a) State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.

(b) In addition, whenever an area has been approved by the President for site characterization, a State or an affected Indian tribe may submit to the Director a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The proposal may be submitted at any time and shall contain a description and schedule of how the State or affected Indian tribe wishes to participate in the review, of what services or activities the State or affected Indian tribe wishes NCR to carry out, and how the services or activities proposed to be carried out by NCR would contribute to such participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NCR, such as establishing additional public document rooms or employment or exchange of State personnel under the Intergovernmental Personnel Act.

(c) The Director shall arrange for a meeting between the representatives of the State or affected Indian tribe and the NCR staff to discuss any proposal submitted under paragraph (b) of this section, with a view of identifying any modifications that may contribute to the effective participation by such State or tribe.

(d) Subject to the availability of funds, the Director shall approve all or part of a proposal, as it may be modified through the meeting described above, if it is determined that:

(1) The proposed activities are suitable in light of the type and magnitude of impacts which the State or affected Indian tribe may bear;

(2) The proposed activities (i) will enhance communications between NRC and the State or affected Indian tribe (ii) will make a productive and timely contribution to the review and (iii) are authorized by law.

(e) The Director will advise the State or affected Indian tribe whether its proposal has been accepted or denied, and if all or any part of proposal is denied, the Director shall state the reason for the denial.

(f) Proposals submitted under this section, and responses thereto, shall be made available at the Public Document Room.

§ 60.64 Notice to States.

If the Governor and legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and legislature separately.

§ 60.65 Representation.

Any person who acts under this subpart as a representative for a State (or for the Governor or legislature thereof) or for an affected Indian tribe shall include in his request or other submission, or at the request of the Commission, a statement of the basis of his authority to act in such representative capacity.

Dated at Washington, D.C. this 10th day of January, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-1401 Filed 01-16-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08-84-08]

Drawbridge Operation Regulations; Sabine River (Old Channel), TX

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Levingston Shipbuilding Company, the Coast Guard is considering a change to the regulation governing the operation of the pontoon bridge on the Old Channel of the Sabine River, mile 9.5 behind Orange Harbor Island, in Orange, Texas to provide that the draw need not open. Presently, the draw is required to open on signal from 7:00 a.m. to 12:00 midnight Monday through Friday except federal holidays, and to open on signal at all other times if at least eight hours notice is given. This proposal is being made because no requests have been made to open the draw since 1970. This action should relieve the bridge owner of the burden of having a person available to open the draw.

ENCLOSURE G

COMPARATIVE TEXT
PART 60 - DISPOSAL OF HIGH-LEVEL
RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for Part 60 [~~continues~~] is revised to read as follows:

AUTHORITY:

1246 (42 U.S.C. 5842, 5846); Secs.[~~10 and 2,~~4] Sec. 10, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. [~~2021a and~~] 5851).

2. Section 60.1 is revised to read as follows:

§60. 1 Purpose and Scope

This part prescribes rules governing the licensing of the U. S. Department of Energy to receive and possess source, special material, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982. This part does not apply to any activity licensed under another part of this chapter.

§60. 2 Definitions

"Affected Indian tribe" means [~~an affected Indian tribe as defined in the Nuclear Waste Policy Act of 1982,~~] any Indian tribe - (a) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located; (b) whose federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of

congressionaly ratified treaties may be substantially and adversely affected by the locating of such a facility: provided, that the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe.

§60.15(c) As provided [~~in § 56.40 of this chapter~~] by Section 113 of the Nuclear Waste Policy Act (42 U.S.C. 10101), DOE is also required to conduct a program of site characterization, including in situ testing at depth, with respect to alternate sites.

§60.18 Review of site characterization activities.1

(b) The Director shall make a copy of the site characterization plan available at the Public Document Room. The Director shall also transmit copies of the published notice of receipt to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. The Director shall provide an opportunity, with respect to any area to be characterized, for the State in which such area is located and for affected Indian tribes to present their views on the site characterization plan and their suggestions with respect to NRC comments on thereon which may be made by NRC. In addition, the Director shall make NRC staff available to consult with States and effected Indian tribes as provided in Subpart C of this Part.

(i) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization. In particular, such

1In addition to the review of site characterization activities specified in this section, the Commission contemplates an ongoing review of other information on site investigation and site characterization, in order to allow early early identification of potential licensing issues for timely resolution. This activity will include, for example, a review of the environmental assessments prepared by DOE at the time of site nomination. [~~A procedural agreement covering NRC-DOE interface during site investigation and site characterization has been published in the Federal Register 48 FR 38701, August 25, 1983,~~] and review of issues related to long lead time exploratory shaft planning and procurement actions by DOE prior to issuance of site characterization plans.

comments shall be made whenever the Director, upon review of comments invited on the site characterization analysis or upon review of DOE's semiannual reports, determines that there are substantial new grounds for making recommendations or stating objections to DOE's site characterization program. The Director shall invite public comment on any comments which the Director makes to DOE upon review of the DOE semi-annual reports or on any other comments which the Director makes to DOE on site characterization.

(j) The Director shall transmit copies of the site characterization analysis and all comments to DOE made by [~~him~~] the Director under this section to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe.

§60.61(c)

Notwithstanding paragraph (a) of this section, the Director is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

§60.22(c)

(2) Review of applicable NRC regulations, licensing procedures, schedules, and opportunities for State and tribe participation in the Commission's regulatory activities.

(3) Cooperation in development of proposals for State and tribe participation in license reviews.

§60.65

Any person who acts under this Subpart as a representative for a State (or for the Governor or legislature thereof) or for an affected Indian tribe shall include in [~~his~~] the request or other submission, or at the request of the Commission, a statement of the basis of his or her authority to act in such representative capacity.

ENCLOSURE H

STAFF RESPONSE TO COMMENTS OF THE ACRS

1. Much of the public comment on the proposed amendments has centered on the deletion of a draft site characterization analysis, and the fact that there continues to be a requirement for a final site characterization analysis has perhaps received less attention than otherwise. However, the proposed rule itself is explicit on this requirement; 60.17 (c) states that;

> "The Director shall review the site characterization plans and prepare a site characterization analysis with respect to such plan. In the preparation of such site characterization analysis, the Director may invite and consider the views of interested persons on DOE's site characterization plan and may review and consider comments made in connection with public hearings held by DOE."

60.17 (d) states that;

> "The Director shall provide to DOE the site characterization analysis together with such additional comments as may be warranted."

The rule calls for the Director to give notice of the availability of the site characterization analysis in the Federal Register [60.17 (f)].

The staff believes that 60.17 as written is sufficiently clear on the requirement for a site characterization analysis.

2. The language in 60.17 (a)(3) is essentially the same as that in the Nuclear Waste Policy Act, Sec. 113(b)(A)(iii). The comment correctly notes that this language calls for plans for the decontamination and decommissioning of a candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if the site is determined unsuitable for application for a construction authorization for a repository. This seems to ignore instances where a candidate site may be found suitable for an application for a construction authorization, but was not selected for an application.

However, 60.17 deals with the site characterization plan, which must be submitted in advance of actual site characterization activities. It would be during the course of site characterization activities or subsequently that a site selected for characterization would be found unsuitable. At the point in time when the site characterization plan must be submitted, there is the potential for any such site to be found unsuitable. The requirement in 60.17(a)(3) follows the NWPA in requiring the site characterization plan to address this contingency.

What site restoration is required is a separate issue. The NWPA does not address this in detail, and the Commission's authority to establish

requirements for site restoration which do not involve radiological issues is not apparent. The inclusion of an item in the plan does not itself indicate that review by NRC is required, as the NWPA calls for the site characterization plans to go to states and Indian tribes for comment. For these reasons, the staff prefers not to specify any such requirements in the rule.

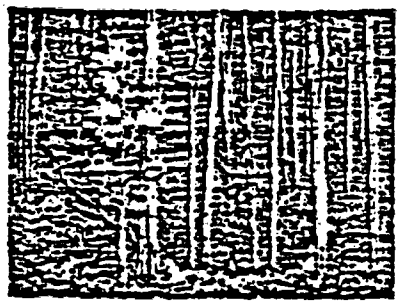
The staff considers the meaning of "decontamination and decommissioning" as it appears in the NWPA and 60.17(a)(3) to be the same as reclamation. Elsewhere in Sec. 113 of the NWPA, "reclaim" is used to describe the same activities referred to above as "decontamination and decommissioning". Sec. 113(c)(4) states that the Secretary (of DOE)

> "shall take reasonable and necessary steps to reclaim the site and to mitigate any significant adverse environmental impacts caused by site characterization activities."

The staff believes that the continuation of the use of the NWPA language is desireable for the purpose of consistency with the NWPA.

Some additional guidance is contained in Proposed Revision 1 to Regulatory Guide 4.17 - Standard Format and Content of Site Characterization Plans for High-Level Waste Geologic Repositories. The staff can adopt other language in the Final Revision 1 in referring to activities described in 60.17(a)(3) should "decommissioning and decontamination" prove to be misleading terminology.

3. These comments support the staff's position that the rule should not call for an independent evaluation by NRC of the site screening and selection process used by DOE, and that no draft site characterization analysis should be required of NRC.



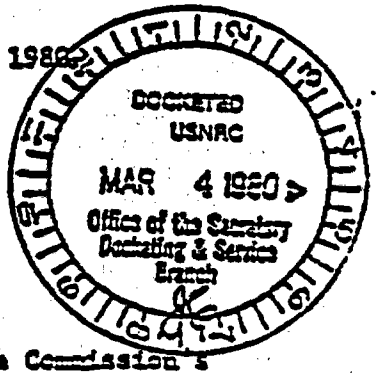
by Ansel Adams in *This is the American Earth*

DOCKET NUMBER
PROPOSED RULE PR-2 (44 FR 70408)

SIERRA CLUB

330 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
(202) 547-1141

March 3, 1980



Secretary of the Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

The Sierra Club appreciates this opportunity to comment on the Commission's Proposed Rule on Disposal of High Level Radioactive Wastes in Geologic Repositories: Proposed Licensing Procedures (44 F.R. 70408, December 6, 1980).

The Sierra Club endorses many of the principles in the Proposed Rule, many of which have been supported by the Final Report of the Interagency Review Group on Nuclear Waste Management and in President Carter's February 12, 1980 Policy Statement on Nuclear Waste Management. However, we do differ with a number of the provisions of the Proposed Rule. The comments below are limited to several of these key provisions. However, our interests and concerns are not necessarily limited to those sections specifically addressed below.

Before addressing specific provisions in the Proposed Rule, we must discuss the underlying assumption that the Nuclear Regulatory Commission should retain the legal authority to license and otherwise regulate the geologic disposal program. This is assumed, of course, by the Interagency Review Group and President Carter.

There is no question that the geologic disposal program should be regulated by a federal agency other than the Department of Energy, which is responsible for conducting the program. However, the Sierra Club does not believe that, barring fundamental changes at the Commission, the Commission can counted on to perform this important function.

We believe that the Commission, both as an institution and in the case of the majority of its personnel, is biased in favor of the nuclear power industry. This pro-industry inclination has been noted recently by the President's Commission on the Accident at Three Mile Island. The Commission's Report stated:

> ...we have seen evidence that some of the old promotional philosophy still influences the regulatory practices of the NRC. While some compromises between the needs of safety

Acknowledged by card. 3/7 GC

Subpart D—Records, Reports, Tests, and Inspections

§ 60.71 Records and reports.

(a) The DOE shall maintain such records and make such reports in connection with the licensed activity as may be required by the conditions of the license or by rules, regulations, and orders of the Commission as authorized by the Atomic Energy Act and the Energy Reorganization Act.

(b) Records of the receipt, handling, and disposition of radioactive waste at a geologic repository operations area shall contain sufficient information to provide a complete history of the movement of the waste from the shipper through all phases of storage and disposal.

(c) The DOE shall promptly notify the Commission of each deficiency found in the site characteristics, and design and construction of the geologic repository operations area which, were it to remain uncorrected, could (1) be a substantial safety hazard, (2) represent a significant deviation from the design criteria and design bases stated in the application, or (3) represent a deviation from the conditions stated in the terms of a construction authorization or the license, including license specifications. The notification shall be in the form of a written report, copies of which shall be sent to the Director and to the appropriate Nuclear Regulatory Commission Inspection and Enforcement Regional Office listed in Appendix D of Part 20 of this chapter.

§ 60.72 Tests.

The DOE shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administration of the regulations in this part. These may include tests of (a) radioactive waste, (b) the geologic repository including its structures, systems, and components, (c) radiation detection and monitoring instruments, and (d) other equipment and devices used in connection with the receipt, handling, or storage of radioactive waste.

§ 60.73 Inspections.

(a) The DOE shall allow the Commission to inspect the premises of the geologic repository operations area and adjacent areas to which the DOE has rights of access.

(b) The DOE shall make available to the Commission for inspection, upon reasonable notice, records kept by the DOE pertaining to activities under this part.

(c)(1) The DOE shall upon request by the Director, Office of Inspection and Enforcement, provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air conditioning, light, electrical outlets and janitorial services shall be furnished by DOE. The office shall be convenient to and have full access to the facility and shall provide the inspector both visual and acoustic privacy.

(2) The space provided shall be adequate to accommodate a full-time inspector, a part-time secretary and transient NRC personnel and will be generally commensurate with other office facilities at the site. A space of 250 square feet either within the site's office complex or in an office trailer or other onsite space is suggested as a guide. For sites containing multiple facilities, additional space may be requested to accommodate additional full time inspector(s). The office space that is provided shall be subject to the approval of the Director, Office of Inspection and Enforcement. All furniture, supplies and communication equipment will be furnished by the Commission.

(3) DOE shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Director as likely to inspect the facility, immediate unfettered access, eqivalent to access provided regular employees, following proper identification and compliance with applicable access control measures for security, radiological protection and personal safety.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

28. Section 70.14 is amended by adding a paragraph (c).

§ 70.14 Specific exemptions.

* * * * *

(c) The DOE is exempt from the requirements of the regulations in this part to the extent that its activities are subject to the requirements of Part 60 of the chapter.

(Amendments to all parts issued pursuant to citations of authority presently codified or, in the case of 10 CFR Part 60, as set out after the list of sections in new Part 60)

Dated at Washington, D.C. this 19th day of February, 1981.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 81-6334 Filed 2-24-81; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 570

[No. 81-83]

Usury Preemption; Most Favored Lender

Dated: February 13, 1981.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final interpretative rule.

SUMMARY: The Federal Home Loan Bank Board adopts an interpretative ruling regarding the ability of insured institutions to assert "most favored lender" status under section 522 of Public Law 96-221. This ruling formally endorses the "most favored lender" concept as a matter of Board policy.

EFFECTIVE DATE: April 1, 1980 (effective date of Pub. L. 96-221).

FOR FURTHER INFORMATION, CONTACT: James C. Stewart, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Telephone: (202) 377-6457.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board is issuing an interpretative ruling regarding section 522 of the Depository Institutions Deregulation and Monetary Control Act, 12 U.S.C. 1730g. It is the Board's view that this provision confers "most favored lender" status on insured institutions. Accordingly, an insured association would be authorized by the law to charge interest at the highest rate allowed under state law for the particular class of loans.

Section 522 amends the National Housing Act by adding the following language:

> If the applicable rate prescribed in this section exceeds the rate an insured institution would be permitted to charge in the absence of this section, such institution may, notwithstanding any State constitution or statute which is hereby preempted for the purpose of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such institution is located or at the rate allowed by the laws of the State, territory, or district where such institution is located, whichever may be greater.

Virtually identical language was also added to the Federal Deposit Insurance Act, 12 U.S.C. 1831d, the Federal Credit Union Act, 12 U.S.C. 1785, and the Small Business Investment Act, 15 U.S.C. 687. The language also parallels that used in the National Bank Act, 12 U.S.C. 85, and

written statements to enable the Commission to determine whether or not the license should be modified, suspended or revoked.

(3) The license shall be subject to the provisions of the Atomic Energy Act now or hereafter in effect and to all rules, regulations, and orders of the Commission. The terms and conditions of the license shall be subject to amendment, revision, or modification, by reason of amendments to or by reason of rules, regulations, and orders issued in accordance with the terms of the Atomic Energy Act.

(c) Each license shall be deemed to contain the provisions set forth in Section 183 b-d, inclusive, of the Atomic Energy Act, whether or not these provisions are expressly set forth in the license.

§ 60.43 License specifications.

(a) A license issued under this part shall include license conditions derived from the analyses and evaluations included in the application, including amendments made before a license is issued, together with such additional conditions as the Commission finds appropriate.

(b) License conditions shall include items in the following categories:

(1) Restrictions as to the physical and chemical form and radioisotopic content of radioactive waste.

(2) Restrictions as to size, shape, and materials and methods of construction of radioactive waste packaging.

(3) Restrictions as to the amount of waste permitted per unit volume of storage space considering the physical characteristics of both the waste and the storage medium.

(4) Requirements relating to test, calibration, or inspection to assure that the foregoing restrictions are observed.

(5) Controls to be applied to restrict access and to avoid disturbance to the geologic repository operations area and adjacent areas.

(6) Administrative controls, which are the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure that activities at the facility are conducted in a safe manner and in conformity with the other license specifications.

§ 60.44 Changes, tests, and experiments.

(a)(1) Following authorization to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area, the DOE may (i) make changes in the geologic repository operations area as described in the application, (ii) make changes in the procedures as described in the application, and (iii) conduct tests or experiments not described in the application, without prior Commission approval, provided the change, test, or experiment involves neither a change in the license conditions incorporated in the license nor an unreviewed safety question.

(2) A proposed change, test, or experiment shall be deemed to involve an unreviewed safety question if (i) the likelihood of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the application is increased, (ii) the possibility of an accident or malfunction of a different type than any previously evaluated in the application is created, or (iii) the margin of safety as defined in the basis for any license condition is reduced.

(b) The DOE shall maintain records of changes in the geologic repository operations area and of changes in procedures made pursuant to this section, to the extent that such changes constitute changes in the geologic repository operations area or procedures as described in the application. Records of tests and experiments carried out pursuant to paragraph (a) of this section shall also be maintained. These records shall include a written safety evaluation which provides the basis for the determination that the change, test, or experiment does not involve an unreviewed safety question. The DOE shall prepare annually, or at such shorter intervals as may be specified in the license, a report containing a brief description of such changes, tests, and experiments, including a summary of the safety evaluation of each. The DOE shall furnish the report to the appropriate NRC Regional Office shown in Appendix D of Part 20 of this chapter with a copy to the Director of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Any report submitted pursuant to this paragraph shall be made a part of the public record of the licensing proceedings.

§ 60.45 Amendment of license.

(a) An application for amendment of a license may be filed with the Commission fully describing the changes desired and following as far as applicable the format prescribed for license applications.

(b) In determining whether an amendment of a license will be approved, the Commission will be guided by the considerations that govern the issuance of the initial license, to the extent applicable.

§ 60.46 Particular activities requiring license amendment.

(a) Unless expressly authorized in the license, an amendment of the license shall be required with respect to any of the following activities:

(1) Any action which would make emplaced high-level radioactive waste irretrievable or which would substantially increase the difficulty of retrieving such emplaced waste.

(2) Dismantling of structures.

(3) Removal or reduction of controls applied to restrict access to or to avoid disturbance of the geologic repository operations area or adjacent areas.

(4) Destruction or disposal of records required to be maintained under the provisions of this part.

(5) Any substantial change to the design or operating procedures from that specified in the license.

(6) Decommissioning.

(b) An application for such an amendment shall be filed, and shall be reviewed, in accordance with the provisions of § 60.45.

Decommissioning

§ 60.51 License amendment to decommission.

(a) The DOE shall submit an application to amend the license prior to decommissioning. The application shall consist of an update of the license application and environmental report submitted under §§ 60.21 and 60.22, including:

(1) A description of the program for post-decommissioning monitoring of the geologic repository.

(2) A detailed description of the measures to be employed—such as land use controls, construction of monuments, and preservation of records—to regulate or prevent activities that could impair the long-term isolation of emplaced waste within the geologic repository and to assure that relevant information will be preserved for the use of future generations.

(3) Geologic, geophysical, geochemical, hydrologic, and other site data that are obtained during the operational period pertinent to the long-term isolation of emplaced radioactive wastes.

(4) The results of tests, experiments, and any other analyses relating to backfill of excavated areas, shaft sealing, waste interaction with emplacement media, and any other tests, experiments, or analyses pertinent to the long-term isolation of emplaced wastes within the geologic repository.

(5) Any substantial revision of plans for decommissioning.

The safe management and disposal of high level wastes, transuranic wastes, and spent fuel, are necessary to protect the public health and safety and natural support systems, both now and for generations to come. We must ensure that the regulators of the nuclear waste management program will serve only to provide for the safest possible disposal of these wastes, and will not be influenced by concerns for the well being of the nuclear power industry. Therefore, we must conclude that, barring a radical change in its attitudes and its operations, the NRC should not remain responsible for regulating the geologic disposal program. We recommend that, absent rapid, major shifts in the the Commission's attitudes and functioning, the Commission's licensing authority over the DOE geologic disposal program be transferred to a new independent commission in the federal executive branch whose sole responsibility is the regulation of nuclear waste activities and programs including, but not necessarily limited to, geologic disposal.

Notwithstanding the above comments, we welcome the opportunity to comment on this Proposed Rule. Adoption of these and similar suggestions by other interested persons could, of course, constitute the major shifts we believe are necessary in the NRC program. We endorse, in principle, the majority of the licensing procedures outlined in the Federal Register discussion preceeding the Proposed Rule. (Assuming, of course, that the NRC retains its licensing authority.) However, the Proposed Rule would fail to implement adequately several of the most important of these principles.

(1) The Proposed Rule should expressly require the Department of Energy to characterize fully several sites in a variety of different geologic media as a prerequisite to applying for a license under Section 60.21. The Federal Register discussion preceeding the Proposed Rule stresses repeatedly the value of characterizing several potentially acceptable sites in a variety of geologic media. Moreover, it is assumed that DOE will conduct such a program. (See "Departure From the General Statement of Policy" at 70409, "Site Characterization Review" at 70409, "Provision for Characterizing Several Sites" at 70409-10, and "Procedures" at 70411.) This requirement was also stressed in President Carter's February 12, 1980 Policy Statement. Yet neither Section 60.21 nor any other section requires multiple site characterizations prior to DOE's application for a license.

(2) The standard to be applied in deciding whether to authorize construction of a geologic repository is entirely too weak. (Section 60.31) The required "Safety" finding (Section 60.31(a)) is merely that there be a "reasonable assurance" that the types and amounts of wastes in the application "can be received, possessed, and disposed of in a repository of the design proposed without unreasonable risk to the health and safety of the public." This finding is entirely too lax.

The purported "Environmental" finding (Section 60.31(c)) is not even an environmental finding. Rather, it is a balancing test which could allow a construction authorization for a repository with recognized catastrophic potential environmental effects. Indeed, this finding is so vague as to be of virtually no value to the Commission or other interested parties.

(6) Other information bearing upon decommission that was not available at the time a license was issued.

(b) The DOE shall update its environmental report in a timely manner so as to permit the Commission to review, prior to issuance of an amendment, substantial changes in the decommissioning activities proposed to be carried out or significant new information regarding the environment impacts of such decommissioning.

§ 60.52 Termination of license.

(a) Following decommissioning, the DOE may apply for an amendment to terminate the license.

(b) Such application shall be filed, and will be reviewed, in accordance with the provisions of § 60.45 and this section.

(c) A license shall be terminated only when the Commission finds with respect to the geologic repository:

(1) That the final disposition of radioactive wastes has been made in conformance with the DOE's plan, as amended and approved as part of the license.

(2) That the final state of the geologic repository operations area site conforms to the DOE's decommissioning plans, as amended and approved as part of the license.

(3) That the termination of the license is authorized by law, including Sections 57, 62, and 81 of the Atomic Energy Act, as amended.

Subpart C—Participation by State Governments and Indian Tribes

§ 60.61 Site review.

(a) Upon publication in the Federal Register of a notice that the DOE has selected a site for site characterization, in accordance with § 60.11(b), and upon the request of a State, the Director shall make available NRC staff to consult with representatives of State, Indian tribal and local governments to keep them informed of the Director's view on the progress of site characterization and to notify them of any subsequent meetings or further consultations with the DOE.

(b) Requests for consultation shall be made in writing to the Director.

(c) The Director also shall respond to written questions or comments from the State, Indian tribal and local governments as appropriate, on the information submitted by the DOE in accordance with § 60.11 of this part. Copies of such questions or comments and their responses shall be made available in the Public Document Room and shall be transmitted to the DOE.

§ 60.62 Filing of proposals for State participation.

(a) Consultation under § 60.61 may include, among other things, a review of applicable NRC regulations, licensing procedures, potential schedules, and the type and scope of State activities in the license review permitted by law. In addition, staff shall be made available to cooperate with the State in developing proposals for participation by the State.

(b) States potentially affected by siting of a geologic repository operations area at a site that has been selected for characterization may submit to the Director a proposal for State participation in the review of the Site Characterization Report and/or license application. A State's proposal to participate may be submitted at any time prior to docketing of an application or up to 120 days thereafter.

(c) Proposals for participation in the review shall be signed by the Governor of the State submitting the proposal and shall at a minimum contain the following information:

(1) A general description of how the State wishes to participate in the review, specifically identifying those issues which it wishes to review.

(2) A description of material and information which the State plans to submit to the NRC staff for consideration in the review. A tentative schedule referencing steps in the review and calendar dates for planned submittals should be included.

(3) A description including funding estimates of any work that the State proposes to perform for the Commission, under contract, in support of the review.

(4) A description of State plans to facilitate local government and citizen participation.

(5) A preliminary estimate of the types and extent of impacts which the State expects should a geologic repository be located at the site in question.

(d) If the State desires educational or information services (seminars, public meetings) or other actions on the part of NRC, such as establishing additional public document rooms or employment or exchange of State personnel under the Intergovernmental Personnel Act, these shall be included with the proposal.

§ 60.63 Approval of proposals.

(a) The Director shall arrange for a meeting between the representatives of the State and the NRC staff to discuss any proposal submitted under § 60.62(b), with a view to identifying any modifications that may contribute to the effective participation by the State.

(b) Subject to the availability of funds, the Director shall approve all or any part of a proposal, as it may be modified through the meeting described above, if it is determined that:

(1) The proposed activities are suitable in light of the type and magnitude of impacts which the State may bear, and

(2) The proposed activities (i) will enhance communications between NRC and the State, (ii) will contribute productively to the license review, and (iii) are authorized by law.

(c) The decision of the Director shall be transmitted in writing to the Governor of the originating State. A copy of the decision shall be made available at the Public Document Room. If all or any part of a proposal is rejected, the decision shall state the reason for the rejection.

(d) A copy of all proposals received shall be made available at the Public Document Room.

§ 60.64 Participation by Indian tribes.

(a) Any Indian tribe which is potentially affected by siting of a geologic repository operations area at a site that has been selected for characterization may:

(1) Request consultation, as provided with respect to States under § 60.61.

(2) Submit proposals for participation, as provided with respect to States under § 60.62, except that such proposals shall be signed by the chief executive (or other specifically authorized representative) of the Tribal organization.

(b) The Director shall respond to such requests or proposals in the manner provided in this subpart, except that decisions under § 60.63 shall be transmitted in writing to the chief executive (or other specifically authorized representative) of the Tribal organization.

(c) Any request or proposal under this section shall be accompanied by such documentation as may be needed to determine the eligibility of the Indian tribe or the specific authority of its representatives.

§ 60.65 Coordination.

The Director may take into account the desirability of avoiding duplication of effort in taking action on multiple proposals submitted pursuant to the provisions of this Subpart to the extent this can be accomplished without substantial prejudice to the parties concerned.

(a) *Safety.* That there is reasonable assurance that the types and amounts of radioactive materials described in the application can be received, possessed, and disposed of in a repository of the design proposed without unreasonable risk to the health and safety of the public. In arriving at this determination, the Commission shall consider whether:

(1) The DOE has described the proposed geologic repository including but not limited to (i) the geologic, geophysical, geochemical and hydrologic characteristics of the site; (ii) the kinds and quantities of radioactive waste to be received, possessed, stored, and disposed of in the geologic repository; (iii) the principal architectural and engineering criteria for the design of the geologic repository operations area; (iv) construction procedures which may affect the capability of the geologic repository to serve its intended function; and (v) features or components incorporated in the design for the protection of the health and safety of the public.

(2) The site and design comply with the criteria contained in Subparts E and F of this part.

(3) The DOE's quality assurance program complies with the requirements of Subpart G of this part.

(4) The DOE's personnel training program complies with the criteria contained in Subpart H of this part.

(5) The DOE's emergency plan complies with the criteria contained in Subpart I of this part.

(6) The DOE's proposed operating procedures to protect health and to minimize danger to life or property are adequate.

(b) *Common defense and security.* That there is reasonable assurance that the activities proposed in the application will not be inimical to the common defense and security. A DOE certification that it will provide at the geologic repository operations area such safeguards as it requires at comparable DOE surface facilities to promote the common defense and security will constitute a rebuttable presumption of noninimicality to the common defense and security.

(c) *Environmental.* That, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, the action called for is issuance of the construction authorization, with any appropriate conditions to protect environmental values.

§ 60.32 Conditions of construction authorization.

(a) A construction authorization shall include such conditions as the Commission finds to be necessary to protect the health and safety of the public, the common defense and security, or environmental values.

(b) The Commission will incorporate in the construction authorization provisions requiring the DOE to furnish periodic or special reports regarding: (1) progress of construction, (2) any site data obtained during construction which are not within the predicted limits upon which the facility design was based, (3) any deficiencies in design and construction which, if uncorrected, could adversely affect safety at any future time, and (4) results of research and development programs being conducted to resolve safety questions.

(c) The construction authorization will include restrictions on subsequent changes to the features of the respository and the procedures authorized. These restrictions will fall into three categories of descending importance to public health and safety as follows: (1) those features and procedures which may not be changed without (i) 60 days prior notice to the Commission, (ii) 30 days notice of opportunity for a prior hearing, and (iii) prior Commission approval; (2) those features and procedures which may not be changed without (i) 60 days prior notice to the Commission, and (ii) prior Commission approval; and (3) those features and procedures which may not be changed without 60 days prior notice to the Commission. Features and procedures falling in paragraph (c)(3) of this section may not be changed without prior Commission approval if the Commission, after having received the required notice, so orders.

(d) A construction authorization shall be subject to the limitation that a license to receive and possess source, special nuclear, or byproduct material at the geologic repository operations area shall not be issued by the Commission until (1) the DOE has updated its application as specified in § 60.24, and (2) the Commission has made the findings stated in § 60.41.

§ 60.33 Amendment of construction authorization.

(a) An application for amendment of a construction authorization shall be filed with the Commission fully describing any changes desired and following as far as applicable the format prescribed in § 60.21.

(b) In determining whether an amendment of a construction authorization will be approved, the Commission will be guided by the considerations which govern the issuance of the initial construction authorization, to the extent applicable.

License Issuance and Amendment

§ 60.41 Standards for issuance of a license.

A license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area may be issued by the Commission upon finding that:

(a) Construction of the geologic repository operations area has been substantially completed in conformity with the application as amended, the provisions of the Atomic Energy Act, and the rules and regulations of the Commission. Construction may be deemed to be substantially complete for the purposes of this paragraph if the construction of (1) surface and interconnecting structures, systems, and components, and (2) any underground storage space required for initial operation are substantially complete.

(b) The activities to be conducted at the geologic repository operations area will be in conformity with the application as amended, the provisions of the Atomic Energy Act and the Energy Reorganization Act, and the rules and regulations of the Commission.

(c) The issuance of the license will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. A DOE certification that it will provide at the geologic repository operations area such safeguards as it requires at comparable DOE facilities to promote the common defense and security, will constitute a rebuttable presumption of non-inimicality to the common defense and security.

(d) All applicable requirements of Part 51 have been satisfied.

§ 60.42 Conditions of license.

(a) A license issued pursuant to this part shall include such conditions, including license specifications, as the Commission finds to be necessary to protect the health and safety of the public, the common defense and security, and environmental values.

(b) Whether stated therein or not, the following shall be deemed conditions in every license issued:

(1) The license shall be subject to revocation, suspension, modification, or amendment for cause as provided by the Atomic Energy Act and the Commission's regulations.

(2) The DOE shall at any time while the license is in effect, upon written request of the Commission, submit

importance of NEPA in the nuclear waste management program. (See 70412)

(9) The strictness of the "important to safety" standard applicable to structures, systems and components should be increased significantly. (Section 60.2(j), at 70416)

(10) The minimum period for public comments on the draft site characterization analysis should be increased from 60 days to 90 days. (section 60.11(e), at 70416)

(11) Section 60.32 should be strengthened by amending subsection (b) to read: "The Commission shall incorporate provisions requiring..." (at 70419)

(12) Section 60.32, which provides for the termination of a license following the decommissioning of the site, should be eliminated from the Proposed Rule. The issue of license termination is a major policy question requiring further study prior to adoption. Such a provision can always be added to the Commissions's Rules at a future date.

This concludes our formal comments on the Proposed Rule. Once again, we appreciate the opportunity to comment on this important proposal.

Respectfully Submitted,

Drew S. Diehl

Drew S. Diehl
Washington Representative

the structures, systems and components of the geologic repository operations area important to safety.

(5) A description of the kind, amount, and specifications of the radioactive material proposed to be received and possessed at the geologic repository operations area.

(6) An identification and justification for the selection of those variables, conditions, or other items which are determined to be probable subjects of license specifications. Special attention shall be given to those items that may significantly influence the final design.

(7) A description of the program for control and monitoring of radioactive effluents and occupational radiation exposures to maintain such effluents and exposures in accordance with the requirements of Part 20 of this chapter.

(8) A description of the controls that the applicant will apply to restrict access and to regulate land use at the geologic repository operations area and adjacent areas.

(9) Plans for coping with radiological emergencies at any time prior to completion of decommissioning the geologic repository operations area.

(10) A description of the nuclear material control and accounting program.

(11) A description of design considerations that are intended to facilitate decommissioning of the facility.

(12) A description of plans for retrieval and alternate storage of the radioactive wastes should the geologic repository prove to be unsuitable for disposal of radioactive wastes.

(13) An identification of the natural resources at the site, the exploitation of which could affect the ability of the site to isolate radioactive wastes.

(14) An identification of those structures, systems, and components of the geologic repository, both surface and subsurface, which require research and development to confirm the adequacy of design. For systems, structures, and components important to safety, the DOE shall provide a detailed description of the programs designed to resolve safety questions, including a schedule indicating when these questions will be resolved.

(15) The following information concerning activities at the geologic repository operations area:

(i) The organizational structure of DOE, offsite and onsite, including a description of any delegations of authority and assignments of responsibilities, whether in the form of regulations, administrative directives, contract provisions, or otherwise.

(ii) The quality assurance program to be used to ensure safety.

(iii) Identification of key positions which are assigned responsibility for safety at and operation of the geologic repository operations area.

(iv) Personnel qualifications and training requirements.

(v) Plans for startup activities and startup testing.

(vi) Plans for conduct of normal activities, including maintenance, surveillance, and periodic testing of structures, systems, and components of the geologic repository operations area.

(vii) Plans for decommissioning.

(viii) Plans for any uses of the geologic repository operations area for purposes other than disposal of radioactive wastes, with an analysis of the effects, if any, that such uses may have upon the operation of the structures, systems, and components important to safety.

§ 60.22 Filing and distribution of application.

(a) An application for a license to receive and possess source, special nuclear, or byproduct material in a geologic repository at a site which has been characterized, and an accompanying environmental report, and any amendments thereto, shall be filed in triplicate with the Director and shall be signed by the Secretary of Energy or his authorized representative.

(b) Each portion of such application and environmental report and any amendments shall be accompanied by 30 additional copies. Another 120 copies shall be retained by DOE for distribution in accordance with written instructions from the Director or the Director's designee.

(c) DOE shall, upon notification of the appointment of an Atomic Safety and Licensing Board, update the application and environmental report, eliminating all superseded information, and serve them as directed by the Board. In addition, at that time DOE shall serve one such copy on the Atomic Safety and Licensing Appeal Panel. Any subsequent amendments to the application or environmental report shall be served in the same manner.

(d) At the time of filing of an application and environmental report, and any amendments thereto, one copy shall be made available in an appropriate location near the site of the proposed geologic repository (which shall be a public document room, if one has been established) for inspection by the public and updated as amendments to the application or environmental report are made. An updated copy shall be produced at any public hearing on the application for use by any parties to the proceeding.

(e) The DOE shall certify that the updated copies of the application and environmental report, as referred to in paragraphs (c) and (d), contain the current contents of such documents submitted in accordance with the requirements of this part.

§ 60.23 Elimination of repetition.

In its application, environmental report, or Site Characterization Report, the DOE may incorporate by reference information contained in previous applications, statements, or reports filed with the Commission: PROVIDED, that such references are clear and specific and that copies of the information so incorporated are available in the public document room located near the site of the proposed geologic repository.

§ 60.24 Updating of application and environmental report.

(a) The application and environmental report shall be as complete as possible in the light of information that is reasonably available at the time of docketing.

(b) The DOE shall update its application in a timely manner so as to permit the Commission to review, prior to issuance of a license:

(1) Additional geologic, geophysical, geochemical, hydrologic, meteorologic and other data obtained during construction.

(2) Conformance of construction of structures, systems, and components with the design.

(3) Results of research programs carried out to confirm the adequacy of designs.

(4) Other information bearing on the Commission's issuance of a license that was not available at the time a construction authorization was issued.

(c) The DOE shall update its environmental report in a timely manner so as to permit the Commission to review, prior to issuance of a license, the environmental impacts of any substantial changes in the activities proposed to be carried out or any significant new information regarding the environmental impacts of activities previously proposed.

Construction Authorization

§ 60.31 Construction authorization.

Upon review and consideration of an application and environmental report submitted under this part, the Commission may authorize construction if it determines:

[1] The criteria in Appendix B of Part 50 of this chapter will be used by the Commission in determining the adequacy of the quality assurance program.

STATE OF CALIFORNIA—THE RESOURCES AGENCY

EDMUND G. BROWN JR., Governor

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION
1111 HOWE AVENUE
SACRAMENTO, CALIFORNIA 95825
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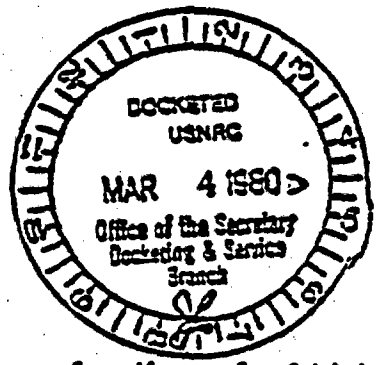
(10)

March 3, 1980

DOCKET NUMBER
PROPOSED RULE PR-2 (44 FR 70408)

Secretary of the Nuclear
Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Service
Branch



Dear Mr. Secretary:

The proposed licensing procedures for disposal of high-level radioactive waste in geologic repositories (Federal Register, December 6, 1979) are a significant improvement over the proposed general statement of policy which the U.S. Nuclear Regulatory Commission (NRC) issued in November 1978. The current proposal demonstrates this improvement in two ways. First, the Supplementary Information indicates NRC's recognition that an understanding of the fundamental scientific questions associated with long-term geologic isolation from the biosphere of nuclear wastes is the key to a successful licensing program. Second, it provides a framework within which the necessary information may be gathered as a basis for determining whether a specific repository design at a specific site will provide "reasonable assurance" that radioactive wastes can be disposed of without "unreasonable risk to the health and safety of the public."

We commend NRC's efforts toward structuring a workable licensing procedure, and support the basic approach embodied in these proposed regulations. In general, we agree with the statement on page 70411 of the Supplemental Information that:

> "The technical criteria against which the license application will be reviewed are still under development. However, the scope of the technical criteria is regarded as being sufficiently developed to determine an appropriate licensing procedure for their implementation." (Emphasis added)

We do not believe, however, that the current proposal contains all the procedural steps which our understanding of this scope implies are necessary to make licensing decisions. Several aspects of the regulations are vague; we believe they can be improved by making changes consistent with the following discussion.

Acknowledged by card. 3/11

the Tribal organization if it is to be located within an Indian reservation) and to the Governors of any contiguous States.

(e) A reasonable period, not less than 90 days, shall be allowed for comment on the draft site characterization analysis. The Director shall then prepare a final site characterization analysis which shall take into account comments received and any additional information acquired during the comment period. Included in the final site characterization analysis shall be either an opinion by the Director that he has no objection to the DOE's site characterization program, if such an opinion is appropriate, or specific objections of the Director to DOE's proceeding with characterization of the named site. In addition, the Director may make specific recommendations to DOE on the matters pertinent to this section. A copy of the final site characterization analysis and the Director's opinion will be transmitted to DOE.

(f) Neither issuance of a final site characterization analysis nor the opinion by the Director shall constitute a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards, other presiding officers, or the Director, in any proceeding under Subpart G of Part 2 of this chapter. If DOE prepares an Environmental Impact Statement with respect to site characterization activities proposed for a particular site, it should consider NRC's site characterization analyses before publishing its final Environmental Impact Statement with respect to site characterization activities proposed for that particular site.

(g) During site characterization, DOE shall inform the Director by semiannual report and by other reports on any topic related to site characterization if requested by the Director, of the progress of the site characterization and waste form and packaging research and development. The semiannual reports should include the results of site characterization studies, the identification of new issues, plans for additional studies to resolve new issues, elimination of planned studies no longer necessary, identification of decision points reached and modification to schedules were appropriate. Also reported should be the DOE's progress in developing the design of a geologic repository operations area appropriate for the site being characterized, noting when key design parameters or features which depend upon the results of site characterization will be established. During this time, NRC staff shall be permitted to visit and inspect the site and observe excavations, borings, and in situ tests as they are done.

(h) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization. Comments received from States in accordance with § 60.61 shall be considered by the Director in formulating his views. All correspondence between DOE and the NCR including the reports cited in paragraph (g) shall be placed in the Public Document Room.

(i) The activities described in paragraphs (a) through (h) above constitute informal conference between a prospective applicant and the staff, as described in § 2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as amended.

License Applications

§ 60.21 Content of application.

(a) An application shall consist of general information and a Safety Analysis Report. An environmental report shall be prepared in accordance with Part 51 of this chapter and shall accompany the application. Any Restricted Data or National Security Information shall be separated from unclassified information.

(b) The general information shall include:

(1) A general description of the proposed geologic repository identifying the location of the geologic repository operations area, the general character of the proposed activities, and the basis for the exercise of licensing authority by the Commission.

(2) Proposed schedules for construction, receipt of waste, and emplacement of wastes at the proposed geologic repository operations area.

(3) A certification that DOE will provide at the geologic repository operations area such safeguards as it requires at comparable surface facilities (of DOE) to promote the common defense and security.

(4) A description of the physical security plan for protection against radiological sabotage. Since the radiation hazards associated with high-level wastes make them inherently unattractive as a target for theft or diversion, no detailed information need be submitted on protection against theft or diversion.

(5) A description of site characterization work actually conducted by DOE at all sites considered in the application and, as appropriate, explanations of why such work differed from the description of the site characterization program described in the Site Characterization Report for each site.

(c) The Safety Analysis Report shall include:

(1) A description and analysis of the site at which the proposed geologic repository operations area is to be located with appropriate attention to those features that might affect facility design and performance. The assessment shall contain an analysis of the geology, geophysics, hydrology, geochemistry, and meteorology of the site and the major design structures, systems, and components, both surface and sub-surface, that bear significantly on the suitablity of the geologic repository for disposal of radioactive waste. It will be assumed that operations at the geologic repository operations area will be carried out at the maximum capacity and rate of receipt of radioactive waste stated in the application.

(2) A description and discussion of the design, both surface and subsurface, of the geologic repository operations area including: (i) the principal design criteria and their relationship to any general performance objectives promulgated by the Commission, (ii) the design bases and the relation of the design bases to the principal design criteria, (iii) information relative to materials of construction (including geologic media, general arrangement, and approximate dimensions), and (iv) codes and standards that DOE proposes to apply to the design and construction of the geologic repository operations area.

(3) A description and analysis of the design and performance requirements for structures, systems, and components of the geologic repository which are important to safety. The analysis and evaluation shall consider (i) the margins of safety under normal conditions and under conditions that may result from anticipated operational occurrences, including those of natural origin; (ii) the adequacy of structures, systems, and components provided for the prevention of accidents and mitigation of the consequences of accidents, including those caused by natural phenomena; and (iii) the effectiveness of engineered and natural barriers, including barriers that may not be themselves a part of the geologic repository operations area, against the release of radioactive material to the environment.

(4) A description of the quality assurance program to be applied to the design, fabrication, inspection, construction, testing, and operation of

lateral excavations and borings, and in situ testing at depth needed to determine the suitability of the site for a geologic repository, but does not include preliminary borings and geophysical testing needed to decide whether site characterization should be undertaken.

(q) "Tribal organization" means a Tribal organization as defined in the Indian Self-Determination and Education Assistance Act (Public Law 93-638).

§ 60.3 License required.

(a) DOE shall not receive or possess source, special nuclear, or byproduct material at a geologic repository operations area except as authorized by a license issued by the Commission pursuant to this part.

(b) DOE shall not commence construction of a geologic repository operations area unless it has filed an application with the Commission and has obtained construction authorization as provided in this part. Failure to comply with this requirement shall be grounds for denial of a license.

§ 60.4 Communications.

Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Communications, reports, and applications may be delivered in person at the Commission's offices at 1717 H Street NW, Washington, D.C., or 7915 Eastern Avenue, Silver Spring, Maryland.

§ 60.5 Interpretations.

Except as specifically authorized by the Commission, in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be considered binding upon the Commission.

§ 60.6 Exemptions.

The Commission may, upon application by DOE, any interested person, or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

§ 60.7 License not required for certain preliminary activities.

The requirement for a license set forth in § 60.3(a) of this part is not applicable to the extent that DOE receives and possesses source, special nuclear, and byproduct material at a geologic repository:

(a) For purposes of site characterization; or

(b) For use, during site characterization or construction, as components of radiographic, radiation monitoring, or similar equipment or instrumentation.

Subpart B—Licenses

Preapplication Review

§ 60.10 Site characterization.

(a) Prior to submittal of an application for a license to be issued under this part the DOE shall conduct a program of site characterization with respect to the site to be described in such application.

(b) Unless the Commission determines with respect to the site described in the application that it is not necessary, site characterization shall include a program of in situ exploration and testing at the depths that wastes would be emplaced.

(c) As provided in § 51.40 of this chapter, DOE is also required to conduct a program of site characterization, including in situ testing at depth, with respect to alternative sites.

§ 60.11 Site characterization report.

(a) As early as possible after commencement of planning for a particular geologic repository operations area, and prior to site characterization, the DOE shall submit to the Director a Site Characterization Report. The report shall include[6] (1) a description of the site to be characterized; (2) the criteria used to arrive at the candidate area; (3) the method by which the site was selected for site characterization; (4) identification and location of alternative media and sites at which DOE intends to conduct site characterization and for which DOE anticipates submitting subsequent Site Characterization Reports; (5) a description of the decision process by which the site was selected for characterization, including the means used to obtain public, Indian tribal and State views during selection; (6) a description of the site characterization program including (i) the extent of planned excavation and plans for in situ testing, (ii) a conceptual design of a repository appropriate to the named site in sufficient detail to allow assessment of the site characterization program with respect to investigation activities which address the ability of the site to host a repository and isolate radioactive waste, or which may affect such ability, and (iii) provisions to control any adverse, safety-related effects from site characterization, including appropriate quality assurance programs; (7) a description of the quality assurance program to be applied to data collection; and (8) any issues related to the site selection, alternative candidate areas or sites, or design of the geologic repository operations area which the DOE wishes the Commission to review. Also included shall be a description of the research and development activities being conducted by DOE which deal with the waste form and packaging which may be considered appropriate for the site to be characterized, including research planned or underway to evaluate the performance of such waste forms and packaging.

(b) The Director shall cause to be published in the Federal Register a notice that the information submitted under paragraph (a) of this section has been received and that a staff review of that information has begun. The notice shall identify the site selected for site characterization and alternate areas being considered by DOE and shall advise that consultation may be requested by State and local governments and Tribal organizations in accordance with Subpart C of this part.

(c) The Director shall make available a copy of the above information at the Public Document Room. The Director also shall transmit copies and the published notice of receipt thereof to the Governor and legislature of the State and to the chief executive of the municipality in which a site to be characterized is located (or if it is not located within a municipality, then to the chief executive of the county, or to the Tribal organization if it is to be located within an Indian reservation) and to the Governors of any contiguous States.

(d) The Director shall prepare a draft site characterization analysis which shall discuss the items cited in paragraph (a) of this section. The Director shall publish a notice of availability of the draft site characterization analysis and a request for comment in the Federal Register. Copies shall be made available at the Public Document Room. The Director shall also transmit copies to the Governor and legislature of the State and the chief executive of the municipality in which a site to be characterized is located (or if it is not located within a municipality, then to the chief executive of the county, or to

[6] To the extent that the information indicated in items 2 through 5 appears in an Environmental Impact Statement prepared by DOE for site characterization at the named site, it may be incorporated into DOE's Site Characterization Report by reference.

work in this area and has discussed these experiments in public documents. For example, in addition to the requirements for alternative sites and media investigations mentioned above, we recommend that thermal experiments be run at well above design base heat loads to determine if unexpected effects occur and to our ability to predict thermal response. In situ tests should also include radionuclide or stable element migration over reasonable ranges of water temperature, pressure, Eh, and pH to examine actual geochemical, diffusion and waste-rock interactions under natural conditions.

Thus, NRC could currently specify within the procedural element of the proposed regulations, a number of specific experiments which would aid in the successful licensing of a repository. Doing so would demonstrate the good faith of NRC to address the scientific issues, including the most basic issue: Are the technical criteria adequate to assure isolation? Furthermore, specifying such experiments is a necessary step if NRC views the licensing process as a means for developing technical criteria.

License Application and Construction Authorization

Section 60.21(c)(13) requires DOE to specify in its license application--that is, after site characterization and before construction authorization--"those structures, systems, and components of the geologic repository, both surface and subsurface, which require research and development to confirm the adequacy of design." A time scale is required for resolving issues related to items "important to safety."

Although this language describes a procedure which is common in reactor licensing, repository licensing differs from the former in at least one critical aspect. As noted in the Supplemental Information section, under Site Characterization Review (page 70409), the two processes differ in "the extent to which engineered features can be relied upon to accommodate deficiencies in site characteristics." Obtaining such information for geologic repositories has been an elusive goal in the past, and there is little certainty about how quickly such information can be gathered in the future. Therefore, if critical, unanswered scientific and engineering questions are identified as requiring further research and development, and construction is authorized on this basis, there is a possibility that the licensing process and construction may have to be terminated at a later date--at a great cost. There is also a possibility that the project will acquire sufficient momentum that, except in the event of highly visible failure, termination will be ruled out. The regulations therefore should specify criteria which must be met prior to NRC's authorizing construction.

The most important criterion to be met concerns the geologic disposal concept itself. Our first concern is that the proposed regulations do not address adequately the contribution which geology makes to successful isolation. None of the criteria for site characterization includes provisions for locating a geologically stable site which provides assurances for predicted stability over the life of the repository. Site studies which do not consider geologic history may neglect adverse future changes in the ability of a site to isolate wastes for thousands of years. Therefore, we recommend that the proposed rule adopt the following guideline which was discussed in the NRC conference on

of a license to take account of any substantial changes in the activities proposed to be carried out or significant new information regarding the environmental impacts of the proposed activities.

25. A new Part 60 is added to read as follows:

PART 60—DISPOSAL OF HIGH LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

Subpart A—General Provisions

Sec.
60.1 Purpose and scope.
60.2 Definitions.
60.3 License required.
60.4 Communications.
60.5 Interpretations.
60.6 Exemptions.
60.7 License not required for certain preliminary activities.

Subpart B—Licenses

Preapplication Review

60.10 Site characterization.
60.11 Site Characterization Report.

License Applications

60.21 Content of application.
60.22 Filing and distribution of application.
60.23 Elimination of repetition.
60.24 Updating of application and environmental report.

Construction Authorization

60.31 Construction authorization.
60.32 Conditions of construction authorization.
60.33 Amendment of construction authorization.

License Issuance and Amendment

60.41 Standards for issuance of a license.
60.42 Conditions of license.
60.43 License specifications.
60.44 Changes, tests, and experiments.
60.45 Amendment of license.
60.46 Particular activities requiring license amendment.

Decommissioning

60.51 License amendment to decommission.
60.52 Termination of license.

Subpart C—Participation by State Governments and Indian Tribes

60.61 Site review.
60.62 Filing of proposals for State participation.
60.63 Approval of proposals.
60.64 Participation by Indian tribes.
60.65 Coordination.

Subpart D—Records, Reports, Tests, and Inspections

60.71 Records and reports.
60.72 Tests.
60.73 Inspections.

Authority: Secs. 51, 53, 62, 63, 65, 81, 161b., f., i., o., p., 182, 183, Pub. L. 83-703, as amended, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); Secs. 202, 206, Pub. L. 93-438, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); Sec. 14, Pub. L. 95-601 (42 U.S.C. 2021a); Sec 102(2)(c), Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332).

For the purposes of Sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, §§ 60.71 to 60.73 are issued under Sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 60.1 Purpose and scope.

This part prescribes rules governing the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area. This part does not apply to any activity licensed under another part of this chapter.

§ 60.2 Definitions.

As used in this part:

(a) "Candidate area" means a geologic and hydrologic system within which a geologic repository may be located.

(b) "Commencement of construction" means clearing of land, surface or subsurface excavation, or other substantial action that would adversely affect the environment of a site, but does not include changes desirable for the temporary use of the land for public recreational uses, site characterization activities, other preconstruction monitoring and investigation necessary to establish background information related to the suitability of a site or to the protection of environmental values, or procurement or manufacture of components of the geologic repository operations area.

(c) "Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

(d) "DOE" means the U.S. Department of Energy or its duly authorized representatives.

(e) "Decommissioning", or "permanent closure", means final backfilling of subsurface facilities, sealing of shafts, and decontamination and dismantlement of surface facilities.

(f) "Disposal" means the isolation of radioactive wastes frm the biosphere.

(g) "Director" means the Director of the Nuclear Regulatory Commission's Office of Nuclear Material Safety and Safeguards.

(h) "Geologic repository" means a system which is intended to be used for, or may be used for, the disposal of radioactive wastes in excavated geologic formations. A geologic repository includes (1) the geologic repository operations area and (2) all surface and subsurface areas where natural events or activities of man may change the extent to which radioactive waste are effectively isolated from the biosphere.

(i) "Geologic repository operations area" means an HLW facility that is part of a geologic repository, including both surface and subsurface areas, where waste handling activities are conducted.

(j) "High-level radioactive waste" or "HLW" means (1) irradiated reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel, and (3) solids into which such liquid wastes have been converted.

(k) "HLW facility" means a facility[5] subject to the licensing and related regulatory authority of the Commission pursuant to Sections 202(3) and 202(4) of the Energy Reorganization Act of 1974 (88 Stat 1244).[5]

(l) "Indian Tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (Public Law (93-638).

(m) "Important to safety," with reference to structures, systems, and components, means those structures, systems, and components that provide reasonable assurance that radioactive waste can be received, handled, and stored without undue risk to the health and safety of the public.

(n) "Public Document Room" means the place at 1717 H Street NW., Washington, D.C., at which records of the Commission will ordinarily be made available for public inspection and any other place, the location of which has been published in the Federal Register, at which public records of the Commission pertaining to a particular geologic repository are made available for public inspection.

(o) "Radioactive waste" means HLW and any other radioactive materials other than HLW that are received for emplacement in a geologic repository.

(p) "Site characterization" means the program of exploration and research, both in the laboratory and in the field, undertaken to establish the geologic conditions and the ranges of those parameters of a particular site relevant to the procedures under this part. Site characterization includes borings, surface excavations, excavation of exploratory shafts, limited subsurface

[5] These are DOE "facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such act [the Atomic Energy Act]" and "Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive wastes generated by [DOE], which are not used for, or are part of, research and development activities."

The fundamental shortcoming of the current proposal is the lack of a mechanism for states, whether potential host states, or adjacent states, to halt the repository siting process when their concerns are not resolved. Interested states (i.e., states which have a generic interest or a policy concerned with nuclear waste) also have concerns which must be met through specific procedures; the scientific questions in repository development are the same for host, adjacent, and interested states. Section 60.62(b), which contains the undefined term "affected (states)," may eliminate input from interested states.

One mechanism for state involvement which has received a good deal of attention, most recently by the Interagency Review Group (IRG), is consultation and concurrence. While the Nuclear Fuel Cycle Committee of the Energy Commission is not tied to this specific terminology, we do support the concept which is embodied in the terminology. Consultation implies an absolute requirement for the federal government to meet, interact, and exchange information with states. Moreover, the idea of concurrence necessarily includes the possibility if nonconcurrence. The proposed licensing regulations appear to bypass entirely the latter concept.

The essential role of a potential host state under current scientific conditions and state-of-the-art should be to participate in the fundamental scientific verification program, even prior to a project being initiated within the state. This role means not only some form of consultative type interaction between the state and the federal government, but also that the state itself should be able to issue a series of concerns or scientific questions and have those questions resolved by its own experts by means of literature searches and informational hearings.

Normally the potential host state role is defined as either having a veto or some form of "cooperative" interaction with the capability to stop the project. This essentially anticipates a subordinate role. In terms of development and in terms of verification prior to licensure, a potential host state should have a capability of interacting on the project and halting the project at any phase of its development if the state is not satisfied that the project is moving forward with a reasonable and predictive set of methodologies. Of course, a mechanism must also be specified for arbitrating cases on nonconcurrence and for an ultimate federal override if arbitration fails.

We offer these comments as constructive criticism of the proposed licensing regulations. We hope you give them serious attention.

Very truly yours,

EMILIO E. VARANINI, III
COMMISSIONER AND PRESIDING MEMBER
NUCLEAR FUEL CYCLE COMMITTEE
CALIFORNIA ENERGY COMMISSION

PRISCILLA C. GREN
DIRECTOR
DEPARTMENT OF CONSERVATION

transfer within the United States source, byproduct and/or special nuclear materials, or to construct, manufacture, possess, own, operate and/or transfer within the United States, any production or utilization facility, and to each director (see § 21.3(f)) and responsible officer (see § 21.3(j)) of such a licensee. The regulations in this part apply also to each individual, corporation, partnership or other entity doing business within the United States, and each director and responsible officer of such organization, that constructs (see § 21.3(c)) a production or utilization facility licensed for manufacture, construction or operation (see § 21.3(h)) pursuant to Part 50 of this chapter or supplies (see § 21.3(l)) basic component (see § 21.3(a)) for a facility or activity licensed, other than for export, under Parts 30, 40, 50, 60, 70, or 71.

§ 21.3 Definitions. [Amended]

16. Section 21.3 is amended by adding the number "60" after "40, 50," wherever it appears in paragraphs (a), (a–1), and (k).

§ 21.21 Notification of failure to comply or existence of a defect.

17. Section 21.21(b)(1) is amended by adding the number "60" after "40, 50" wherever it appears in § 21.21(b)(1)(i) and (ii).

PART 30—RULES OF GENERAL APPLICABILITY TO LICENSING OF BYPRODUCT MATERIAL

18. Section 30.11 is amended by adding a new paragraph (c).

§ 30.11 Specific exemptions.

* * * * *

(c) The DOE is exempt from the requirements of this part to the extent that its activities are subject to the requirements of Part 60 of this chapter.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

19. Section 40.14 is amended by adding a new paragraph (c).

§ 40.14 Specific exemptions.

* * * * *

(c) The DOE is exempt from the requirements of this part to the extent that its activities are subject to the requirements of Part 60 of this chapter.

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

20. Section 51.5(a) is amended by redesignating paragraph (11) as paragraph (12) and adding a new paragraph (11) to read as follows:

§ 51.5 Actions requiring preparation of environmental impact statements, negative declarations, environmental impact appraisals; actions excluded.

(a) * * *

(11) Issuance of a construction authorization for a geologic repository operations area pursuant to Part 60 of this chapter.

* * * * *

21. Section 51.5(b)(4) is amended by changing the periods at the end of (b)(4)(iii) and (b)(4)(iv) to semicolons and adding the word "and" after the new semicolon at the end of paragraph (b)(iv), adding a new paragraph (v); substituting subparagraph (v) for subparagraph (iv) in paragraph (5); inserting "60" following "40," and "50," in paragraph (6); and adding new paragraphs (10) and (11). New paragraphs (b)(4)(v) and (10) and (11) read as follows:

(b) * * *

(4) * * *

(v) The receipt and possession of high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter.

* * * * *

(10) Termination of a license for the possession of high-level radioactive waste at a geologic repository operations area at the request of the licensee.

(11) Issuance of a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter.

22. Section 51.5(d)(3) is amended by adding "60," following "40, 50," to read as follows:

* * * * *

(d) * * *

(3) Non-substantive and insignificant amendments (from the standpoint of environmental impact) of Parts 20, 30, 40, 50, 60, 70, 71, 73, 100, or 110 of this chapter; and

* * * * *

23. Section 51.40 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

§ 51.40 Environmental reports.

(a) Except as provided in paragraphs (b), (c) and (d) of this section, applicants for permits, licenses, and orders, and amendments thereto and renewals thereof, covered by § 51.5(a) shall submit to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, 150 copies of an environmental report which discusses the matters described in § 51.20. Petitioners for rule making covered by § 51.5(a) shall submit to the Director of Standards Development fifty (50) copies of an environmental report which discusses the matters described in § 51.20.

* * * * *

(d) The DOE, as an applicant for a license to receive and possess radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, shall submit at the time of its application or in advance, and at the time of amendments, in the manner provided in § 60.22 of this chapter, environmental reports which discuss the matters described in § 51.20. The discussion of alternatives shall include site characterization data for a number of sites in appropriate geologic media so as to aid the Commission in making a comparative evaluation as a basis for arriving at a reasoned decision under NEPA. Such characterization data shall include results of appropriate in situ testing at repository depth unless the Commission finds with respect to a particular site that such testing is not required. The Commission considers the characterization of three sites representing two geologic media at least one of which is not salt to be the minimum necessary to satisfy the requirements of NEPA. (However, in light of the significance of the decision selecting a site for a repository, the Commission fully expects the DOE to submit a wider range of alternatives than the minimum required here.)

24. Section 51.41 is amended to read as follows:

§ 51.41 Administrative procedures.

Except as the context may otherwise require, procedures and measures similar to those described in §§ 51.22–51.26 will be followed in proceedings for the issuance of materials licenses and other actions covered by § 51.5(a) but not covered by § 51.20 or 51.21. The procedures followed with respect to materials licenses will reflect the fact that, unlike the licensing of production and utilization facilities, the licensing of materials does not require separate authorizations for construction and operation. In the case of an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, however, the environmental impact statement required by § 51.5(a) shall be prepared and circulated prior to the issuance of a construction authorization; the environmental impact statement shall be supplemented prior to issuance

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Department of Energy
Washington, D.C. 20545

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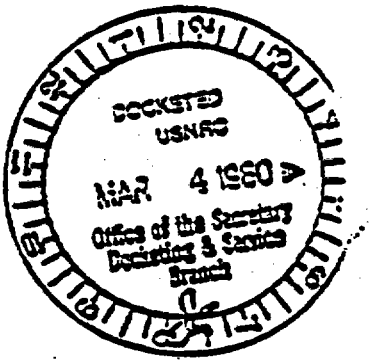

MEMORANDUM FOR Mr. Samuel Chilk
Secretary, Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, D.C. 20555

The Department of Energy (DOE) is pleased to submit comments on the Nuclear Regulatory Commission's (NRC) proposed rules, "Disposal of High-Level Radioactive Wastes in Geologic Repositories; Proposed Licensing Procedures" that were published in the Federal Register on December 6, 1979, 44FR236, pages 70408 through 70421.

As noted in the background information in the Federal Register Notice, the proposed rule departs from the previous proposed General Statement of Policy in that additional review of the Department's plans for site characterization is required in advance of any formal licensing proceedings by the Commission. The Department believes it appropriate to describe what procedures it intends to follow in order to implement the Presidential policy statement of February 12, 1980 in performing site characterization activities and to examine in what way the proposed NRC rule would permit the implementation of this program.

As directed by the President, the Department intends to conduct site investigation and characterization studies in widely diverse geologic environments and potential host rocks and to qualify four to five such sites in widely diverse environments prior to selecting a specific preferred site to be the basis of a formal license application to the Commission. The Department is presently conducting site investigations in several distinct geologic regions of the country and intends shortly to seek State participation in expanding investigations to more diverse media in several additional regions.

Investigation of various geologic regions will sequentially lead to identification of several potential repository locations in each region. At the time that characterization of these several potential locations is sufficient to allow preferential attention to two or three locations within a region, the Department intends to prepare a Site Characterization Plan which will include 1) a description of the two or three sites in the region to be characterized, 2) a description of the proposed site characterization program and 3) the criteria and method used to arrive at preferred sites for characterization. An Environmental Assessment will also be prepared to support the designation of preferred sites for detailed characterization.

The Department intends to prepare this site characterization plan in cooperation with State and local officials who will have been invited to participate in a consultation and concurrence process in cooperation with the Department from the beginning of the site evaluation process in each region, to conduct public hearings near to locations under consideration and to provide copies of appropriate documents in public document rooms in communities near to proposed sites. The Department proposes to submit this Site Characterization Plan and Environmental Assessment to the Director of the Office of Nuclear Material Safety and Safeguards for review by the Commission staff.

Acknowledged by card. 3-5-80. cb

local officials, and cause to be published in the Federal Register a notice of issuance of the license or other action. If a request for a hearing and/or a petition for leave to intervene is filed within the time prescribed in the notice, the Commission or an atomic safety and licensing board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition and the Secretary or the designated atomic safety and licensing board will issue a notice of hearing or an appropriate order.

* * * * *

6. Section 2.106 is amended by adding a new paragraph (c) to read as follows:

§ 2.106 Notice of issuance.

* * * * *

(c) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the Federal Register notice of, and will inform the State, local, and Tribal officials specified in § 2.104(e) of any action with respect to, an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, or for the amendment to such license for which a notice of proposed action has been previously published.

7. Section 2.764 is amended by revising the caption, by adding a new paragraph (d), and by making conforming changes to paragraphs (a) and (b) to read as follows:

§ 2.764 Immediate effectiveness of certain initial decisions.[1]

(a) Except as provided in paragraphs (c) and (d) of this section, an initial decision * * *

(b) Except as provided in paragraphs (c) and (d) of this section, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards * * *

* * * * *

(d) An initial decision directing the issuance of a construction authorization or license under Part 60 of this chapter (relating to disposal of high-level radioactive wastes in geologic repositories) or any amendment to such an authorization or a license authorizing actions which may significantly affect the health and safety of the public, shall become effective only upon order of the Commission. The Director of Nuclear Material Safety and Safeguards shall not issue a construction authorization or a license under Part 60 of this chapter, or any amendment to such an authorization or license which may significantly affect the health and safety of the public until expressly authorized to do so by the Commission.

8. Section 2.780 is amended by adding a new paragraph (g) to read as follows:

§ 2.780 Ex parte communications.

* * * * *

(g) In the case of an application of for a license under Part 60 of this chapter (relating to disposal of high-level radioactive wastes in geologic repositories), this Part requires a proceeding on the record prior to the issuance of a construction authorization. Unless the Commission orders otherwise, the issuance of a construction authorization (or a final decision to deny a construction authorization) shall be deemed, for purposes of this section, to terminate all proceedings on the record then pending before the NRC with respect to such application.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

9. Section 19.2 is amended by adding "60," following "35, 40," to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in Parts 30 through 35, 40, 60, or 70 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

10. Section 19.3(d) is amended by adding "60," following "35, 40," to read as follows:

§ 19.3 Definitions.

As used in this part:

* * * * *

(d) "License" means a license issued under the regulations in Parts 30 through 35, 40, 60 or 70 of this chapter, including licenses to operate a production or utilization facility pursuant to Part 50 of this chapter. "Licensee" means the holder of such a license.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

11. Section 20.2 is amended by adding "60," following "35, 40," to read as follows:

§ 20.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed pursuant to the regulations in Parts 30 through 35, 40, 60 or 70 of this chapter, including persons licensed to operate a production or utilization facility pursuant to Part 50 of this chapter.

12. Section 20.3(a)(9) is amended by adding "60," following "30, 40," to read as follows:

§ 20.3 Definitions.

(a) As used in this part:

* * * * *

(9) "License" means a license issued under the regulations in Part 30, 40, 60 or 70 of this chapter. "Licensee" means the holder of such license.

§ 20.301 General requirement.

13. Section 20.301(a) is amended by adding "60," following "30, 40," to read as follows:

No licensee shall dispose of licensed material except:

(a) By transfer to an authorized recipient as provided in the regulations in Part 30, 40, 60, or 70 of this chapter, whichever may be applicable; or

* * * * *

14. Section 20.408 is amended by deleting the word "or" following the phrase "of this chapter;" in paragraph (a)(3), redesignating paragraph (4), including the table and accompanying note 1, as paragraph (5) and adding a new paragraph (4). Amended paragraph (a)(3) and new paragraph (a)(4) read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) * * *

(3) Possess or use at any one time, for purposes of fuel processing, fabricating, or reprocessing, special nuclear material in a quantity exceeding 5,000 grams of contained uranium-235, uranium-233, or plutonium or any combination thereof pursuant to Part 70 of this chapter;

(4) Possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter; or

* * * * *

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

15. Section 21.2 is amended by inserting "60," after "35, 40," and also by inserting "60," after "40, 50," to read as follows:

§ 21.2 Scope.

The regulations in this part apply except as specifically provided otherwise in Parts 31, 34, 35, 40, 60 or 70 of this chapter, to each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, and/or

[1] The temporary suspension of § 2.764 (a) and (b) in certain proceedings and related matters is addressed in Appendix B to this part.

The remaining procedures of the proposed rule which deal with post-application licensing by the Commission appear appropriate for implementation. We do have a number of minor changes or clarifications in these procedures which are included in the enclosed detailed comments.

Sincerely,

Sheldon Meyers

Sheldon Meyers
Deputy Assistant Secretary
for Nuclear Energy

2 Enclosures

necessary. If the DOE fails to provide the requested data within the time specified, the application shall be subject to denial under § 2.108.

(5) With respect to any tendered document that is acceptable for docketing, the applicant will be requested to (i) submit to the Director of Nuclear Material Safety and Safeguards such additional copies as the regulations in Parts 60 and 51 require, (ii) serve a copy on the chief executive of the municipality in which the geologic repository operations area is to be located or, if the geologic repository operations area is not to be located within a municipality, on the chief executive of the county (or to the Tribal organization, if it is to be located within an Indian reservation), and (iii) make direct distribution of additional copies to Federal, State, Indian Tribe, and local officials in accordance with the requirements of this chapter and written instructions from the Director of Nuclear Material Safety and Safeguards. All such copies shall be completely assembled documents, identified by docket number. Subsequently distributed amendments, however, may include revised pages to previous submittals and, in such cases, the recipients will be responsible for inserting the revised pages.

(6) The tendered document will be formally docketed upon receipt by the Director of Nuclear Material Safety and Safeguards of the required additional copies. The date of docketing shall be the date when the required copies are received by the Director of Nuclear Material Safety and Safeguards. Within ten (10) days after docketing, the applicant shall submit to the Director of Nuclear Material Safety and Safeguards a written statement that distribution of the additional copies to Federal, State, Indian Tribe, and local officials has been completed in accordance with requirements of this chapter and written instructions furnished to the applicant by the Director of Nuclear Material Safety and Safeguards. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addressees.

(7) Amendments to the application and environmental report shall be filed and distributed and a written statement shall be furnished to the Director of Nuclear Material Safety and Safeguards in the same manner as for the initial application and environmental report.

(8) The Director of Nuclear Material Safety and Safeguards will cause to be published in the Federal Register a notice of docketing which identifies the State and location at which the proposed geologic repository operations area would be located and will give notice of docketing to the governor of that State. The notice of docketing will state that the Commission finds that a hearing is required in the public interest, prior to issuance of a construction authorization, and will recite the matters specified in § 2.104(a) of this part.

2. Section 2.103(a) is revised to read as follows:

§ 2.103 Action on applications for byproduct, source, special nuclear material, and operator licenses.

(a) If the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, finds that an application for a byproduct, source, special nuclear material, or operator license complies with the requirements of the Act, the Energy Reorganization Act, and this chapter, he will issue a license. If the license is for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, or if it is to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, the Director of Nuclear Reactor Regulation or the Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the State, Indian Tribe, and local officials specified in § 2.104(e) of the issuance of the license.

* * * * *

3. Section 2.104(e) is revised to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(e) The Secretary will give timely notice of the hearing to all parties and to other persons, if any, entitled by law to notice. The Secretary will transmit a notice of hearing on an application for a facility license or for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee or for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter to the Governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be so located or conducted within an Indian reservation).

4. Section 2.105(a) is amended by adding new paragraphs (4) and (5), redesignating existing paragraph (4) as (6) amending the paragraph redesignated as (6), numbering the existing undesignated paragraph following renumbered paragraph (6) as (7) and adding a new final paragraph (8) to read as follows:

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, prior to acting thereon, cause to be published in the Federal Register a notice of proposed action with respect to an application for:

* * * * *

(4) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter;

(5) An amendment to a license specified in paragraph (a)(4) of this section, or an amendment to a construction authorization granted in proceedings on an application or such a license, when such amendment would authorize actions which may significantly affect the health and safety of the public; or

(6) Any other license or amendment as to which the Commission determines that an opportunity for a public hearing should be afforded.

(7) In the case of an application for an operating license for a facility of a type described in § 50.21(b) or § 50.22 of this chapter or a testing facility, a notice of opportunity for hearing shall be issued as soon as practicable after the application has been docketed.

(8) In the case of an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, a notice of opportunity for hearing, as required by this paragraph, shall be published prior to Commission action authorizing receipt of such wastes; this requirement is in addition to the procedures set out in § 2.101(f)(8) and § 2.104 of this part, which provide for a hearing on the application prior to issuance of a construction authorization.

5. 10 CFR 2.105(e) is revised to read as follows:

* * * * *

(e) If no request for a hearing or petition for leave to intervene is filed within the time prescribed in the notice, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, may take the proposed action, inform the appropriate State and

Energy Act for protection of materials and facilities far more sensitive from a safeguards standpoint than nuclear waste materials in a geologic repository. Therefore, the rule provides that a DOE certification that its repository operations area safeguards are equal to those at comparable DOE surface facilities shall constitute a rebuttable presumption on the question of inimicality to the common defense and security.

g. *Conditions of Construction Authorization.* The final rule specifies (§ 60.32(b)) that the construction authorization "will incorporate" conditions requiring the submission of certain periodic or special reports. This wording differs from that of the proposed rule which stated that the Commission "may, at its discretion incorporate" these conditions. The NRC agrees with a commenter that such reports will be needed and that there is no reason to reserve discretion, as the proposed rule would have done. The particulars of the conditions would, of course, depend upon the nature of the project that is to be constructed.

A new paragraph 60.32(c) has been included in the final rule to inform DOE that the construction authorization will include restrictions on subsequent changes to the features of the repository and the procedures authorized. These restrictions will fall into three categories of descending importance to public health and safety as follows: (1) those features and procedures which may not be changed without (i) 60 days prior notice to the Commission, (ii) 30 days notice of opportunity for a prior hearing, and (iii) prior Commission approval; (2) those features and procedures which may not be changed without (i) 60 days prior notice to the Commission, and (ii) prior Commission approval; and (3) those features and procedures which may not be changed without 60 days prior notice to the Commission. Features and procedures falling in category (3) may not be changed without prior Commission approval if the Commission, after having received the required notice, so orders.

Not every feature and procedure in the license application at the time the construction authorization is issued would need to be included in one of the three categories. There will be a number of matters that could be changed as construction progresses without prior notice to the Commission. Such changes would be brought to the Commission's attention when the license application is updated prior to issuance of a license to receive wastes. Also, it is contemplated that changes to features or procedures included in these categories of license conditions considered minor with respect to the public health and safety, could be made with prior notice to the Commission but without prior Commission approval.

h. *License Specifications.* The Commission has accepted a suggestion to delete a requirement for including, as license conditions, restrictions as to the location and characteristics of the storage medium. As noted by a commenter, these features may be inherent in the storage medium itself.

i. *Inspections.* The final rule contains a provision (§ 60.73(c)) requiring DOE to provide onsite office space for the exclusive use of NRC inspectors and personnel.

j. *Participation of Indian Tribes.* Several changes have been made in the rule to provide for full participation by Indian tribes in the licensing procedures. These changes generally provide that tribes shall have the same opportunities as governmental units. A new Section 60.64 provides that Indian Tribes shall have the same opportunities as States to submit proposals for their participation in the NRC review. These proposals shall be approved (and may be funded) if appropriate findings can be made concerning the contribution to be made to the licensing review. A new Section 60.65 makes it clear, however, that the Director shall endeavor to avoid duplication of effort when acting on multiple proposals, to the extent that this can be accomplished without substantial prejudice to the parties involved.

k. *Preparation of an Environmental Impact Statement prior to issuance of license to receive and possess HLW.* The requirement that the NRC prepare and circulate an EIS prior to issuing a license to receive and possess HLW has been deleted (51.5(a)(11)). Since an EIS will be prepared by NRC prior to granting construction authorization for a geologic respository operations area, it may not be necessary to prepare a second EIS. Rather, after the construction authorization stage, the NRC will perform environmental assessments, and, as appropriate, will supplement the EIS or determine that no such supplemental statement is required.

l. *Records and Tests.* The term "significant" has been deleted from Section 60.71(c)(3). The Commission requires notification of all deviations from license conditions.

m. *Definition of the term "Commission."* A definition of the term "Commission" has been added to the final rule to make it clear that in Part 60, the "Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Public Law 95-601 (November 6, 1978), the National Environmental Policy Act of 1969, as amended, and sections 552 and 553 of title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations are published as a document subject to codification.

PART 2—RULES OF PRACTICE

1. Section 2.101 is amended to add a new paragraph (f) to read as follows:

§ 2.101 Filing of application.

* * * * *

(f)(1) Each application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter and any environmental report required in connection therewith pursuant to Part 51 of this chapter shall be processed in accordance with the provisions of this paragraph.

(2) To allow a determination as to whether the application or environmental report is complete and acceptable for docketing, it will be initially treated as a tendered document, and a copy will be available for public inspection in the Commission's Public Document Room. Twenty copies shall be filed to enable this determination to be made.

(3) If the Director of Nuclear Material Safety and Safeguards determines that the tendered document is complete and acceptable for docketing, a docket number will be assigned and the applicant will be notified of the determination. If it is determined that all or any part of the tendered document is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination and the respects in which the document is deficient.

(4) The Director may determine the environmental report to be not complete and therefore not acceptable for processing if it fails to include the required site characterization data, including the results of appropriate in situ testing at depth for each site characterized, with respect to the number of sites and media specified in § 51.40 of this chapter. If such a determination is made, the Director shall request the DOE to submit, within a specified time, such characterization data as the Director determines to be

from NRC licensing except as expressly required to be licensed need not be licensed for such preliminary activities. This is not an exemption under the exemption provisions of the Atomic Energy Act, but rather an interpretation of the Commission's jurisdiction under Section 202 of the Energy Reorganization Act of 1974. In other words the "facility" that the NRC is licensing is one at which high-level radioactive wastes are actually stored. To the extent that the procedures call for earlier NRC involvement, that involvement would be undertaken with a view to long-term health and safety considerations; but during site characterization and prior to emplacement of waste, there would be no "facility" for storage of high-level waste and no basis for the exercise of licensing authority over the incidental use of source, special nuclear, and byproduct material by DOE.

Once operations at a facility have been licensed, the Commission believes it should regulate the use of all licensable materials onsite, so as to avoid fragmentation of responsibility and accountability with respect to radiological safety (particularly as it may affect occupational exposures).

The change does not respond to the DOE's additional concern that the proposed rule would prohibit construction and operation of a surface facility for the storage of spent reactor fuel at a repository site prior to issuance of a Part 60 license. Should this situation actually arise in practice, the Commission would consider granting an exemption so as to permit licensing to be carried out under other parts of NRC regulations.

c. *Site Characterization.* Following detailed consideration of public comments, the Commission has decided to require in situ testing at depth and to specify the minimum number of sites to be considered as alternatives during site characterization.

d. *Site Characterization Report.* One commenter on the proposed rule suggested that the description of the DOE's planned site characterization program include a preliminary design of the repository. Knowledge of the proposed design would help indicate how the testing program related to the repository layout. The Commission has made it explicit that the Site Characterization Report include a conceptual design of the geologic repository operations area. This is needed so as to permit analysis of certain aspects of the site characterization program. (§ 60.11(a).)

The provisions of § 60.11(a) have been modified by the addition of a footnote to indicate that information on the criteria and methods used for site selection, identification and location of alternative sites and media, and the decision process used to select the site, including means used to obtain State, Indian tribal and public views, which all can be expected to be in DOE's Environmental Impact Statement for site characterization, need not be duplicated in the Site Characterization Report, but can be incorporated by reference.

§ 60.11(e) has been modified to state explicitly that a copy of NRC's final site characterization analysis and the Director's opinion will be transmitted to DOE.

The provisions of § 60.11(g) have been changed to require DOE to permit NRC staff to visit and inspect the site and observe excavations, borings, and in situ tests as they are done. The NRC believes that such a requirement is essential for NRC to determine that site characterization activities have no adverse impacts upon site safety.

The proposed rule contained provisions which would permit the DOE to include multiple sites in a single Site Characterization Report. In response to public comment, and for the sake of clarity, the final rule requires a separate Site Characterization Report for each site to be characterized.

The Commission reiterates that the Site Characterization Report will be reviewed by the NRC staff with opportunity for public comment on the NRC staff analysis of the DOE Site Characterization Report. DOE has indicated that it will provide opportunity for public comment on its Site Characterization Report prior to submittal to the NRC. Also, the Commission continues to anticipate that it will hold local public meetings in the immediate area of the site to be characterized. These meetings will be held both to disseminate information and to obtain public input which will be factored into the final version of the staff analysis.

The period for comment on the NRC's draft site characterization analysis has been extended from a minimum of 60 days to a minimum of 90 days in response to public comment. (§ 60.11(e))

The provision concerning semiannual progress reports has been expanded so as to provide additional guidance to the DOE on the contents of those reports. (§ 60.11(g)) In addition, § 60.11(g) now contains a provision which requires DOE to provide in report form, any information related to site characterization, when requested by the Director.

The rule has been revised to permit the Director to comment at any time in writing to DOE to express views on any aspect of site characterization (§ 60.11(h)).

e. *Content of License Application.* Provisions which set forth the general information to be included in an application have been expanded to include a description of site characterization work actually conducted by DOE at all sites considered and, as appropriate, explanations of why such work differed from the description of program in the Site Characterization Report for each site (60.21(b)(5)). It is expected that such a provision will facilitate the evaluation of DOE's site characterization by the public.

f. *Construction Authorization Findings.* The necessary findings by the Commission on environmental matters (§ 60.31(c)) have been revised to conform to the language in other portions of the Commission's regulations. Contrary to the views expressed by a commenter, the Commission regards this provision as being fully consistent with the requirements of NEPA. Further specificity may be provided, however, particularly with respect to the criteria for evaluating alternative sites at the time technical criteria are proposed.

The Commission has declined to modify the common defense and security finding, which one commenter characterized to be "so vague as to be of no consequence." The proposed "inimicality" findings, §§ 60.31(b) and 60.41(c), reflect the legal standards set forth in the Atomic Energy Act, in particular Section 57c.(2) thereof. The concerns here related generally to protection of classified information and materials, protection against loss or diversion of nuclear waste materials from the repository, and protection against radiological sabotage at the repository. Detailed regulations appear in other parts of this chapter on protection of classified matters and no further special provisions appear to be required for Part 60. See 10 CFR Part 2, subpart I, Part 25, Part 95. Radiation hazards associated with high-level radioactive wastes make them inherently unattractive as a target for diversion, and therefore no detailed provisions appear to be warranted at this time for protection against loss or diversion. The rule has been changed to require DOE to describe the elements of its plan to protect against sabotage. However, DOE, as a Federal agency operating under the Atomic Energy Act, has its own obligation to promote the common defense and security. Indeed, DOE is responsible under the Atomic

It should be noted, however, that proposals for intervenor funding have not been incorporated as suggested by some commenters. This question may be addressed separately in the context of rulemaking applicable to various adjudicatory proceedings, should the Commission be given statutory authority, which it now lacks, to provide such funding.

In response to commenters' suggestions, the rule has been clarified with respect to notice to and participation by Indian tribes.

g. *Public Hearings.* The issue of whether public hearings should be mandatory during the pre-licensing and/or licensing stages of geologic disposal of HLW was addressed by a numbers of commenters. Two commenters suggested that hearings be required prior to site characterization. One commenter suggested that public hearings should be held in the vicinity of a proposed site prior to the approval of a Site Characterization Report, while another commenter suggested that hearings be held prior to in situ testing at depth. It was also proposed by another commenter that public hearings be held on DOE's research and development work on waste forms. Finally, two other commenters believed that formal hearings should be mandatory prior to granting construction authorization to DOE. These issues were discussed at the time the rule was proposed. The Commission then concluded, in light of the limited information available at the site characterization stage, that formal hearings were not warranted at that point. The commenter did not deny the relevance of the policy considerations identified by the Commission, but would have balanced these considerations differently. But this is a matter of judgment, and the NRC adheres to its original position for the reasons then offered. Also, the NRC must decline to review DOE research and development programs formally. NRC's statutory authority includes "licensing and related regulatory authority" as to certain DOE facilities. Although it is important to follow DOE's program closely, the Commission would not be warranted in formalizing a review process with respect to that program.

In reviewing the procedures for formal proceedings in connection with licensing, the Commission has determined that hearings would be in the public interest prior to the granting of construction authorization. An amendment (in § 2.101(f)(8)) has the effect of mandating such hearings. In addition, hearings will be held upon the request of any interested person prior to finally granting a license to receive and possess high-level radioactive waste at a geologic repository operations area and before granting license amendments to decommission or terminate a license.

As in the case of facility licensing matters, ex parte communications would be restricted while on-the-record proceedings are pending. Because a construction authorization (unlike a construction permit) is not a license, its issuance does not constitute a final decision on the pending application. To avoid any unintended implication that the ex parte rule (10 CFR 2.780) would apply between the construction authorization proceedings and the commencement of formal proceedings prior to receipt of wastes, that rule has been amended to provide specifically that a final decision with respect to issuance of construction authorization will be deemed, unless the Commission orders otherwise, to terminate, for purposes of the ex parte rule, formal proceedings then pending before the NRC with respect to the application.

The rule has also been revised to provide that in cases involving public hearings, the initial decision of the presiding officer shall not be immediately effective. (§ 2.764.) It is further provided that even if no hearing has been held, the Director of Nuclear Material Safety and Safeguards will not issue a construction authorization, license, or significant amendment until expressly authorized to do so by the Commission. The Commission has not yet determined the specific procedures for agency review of an initial decision. It will be the Commission's intention, however, to provide expeditious action on an initial decision to avoid any undue delays in the licensing process. These changes, while not issued in direct response to commenters' suggestions, reflect sentiments that the Commission itself should be involved in major decisions on these facilities.

h. *Preliminary Nature of the Information to be Included in an Application for Construction Authorization.* A number of commenters expressed the opinion that the wording of § 60.21 did not explicitly reflect the preliminary nature of some of the information that would be available at the construction authorization stage. Some commenters believed that certain categories of information, such as emergency plans and plans for retrieval, did not seem necessary, at least in full detail, at the construction authorization stage. In view of the fact that § 60.21 must be read in conjunction with § 60.24(a), which specifies that the application "shall be as complete as possible in light of information that is reasonably available at the time of docketing," no change to the proposed rule is required. Further, § 60.24(b) specifically lists several categories of information which, where appropriate, may be left for consideration only at the state of license issuance.

i. *Termination of a License.* Two commenters opposed the provisions (§ 60.52) for the termination of a license for a repository after decommissioning. The Commission believes that there will be considerable debate regarding license termination during the period between adoption of rules and implementation of their provisions. Although the Commission could have omitted the topic altogether, it believes that some recognition of the issue is desirable so that the rule covers the entire process. It should be noted that there is no assurance under the language that the license would be terminated since a decision to do so could only be made if "authorized by law." The Commission wishes to emphasize that criteria to be used in making a decision to decommission a repository are not included in this procedural rule but will be set forth either within the technical criteria of Part 60 or as a future regulation or policy statement.

Changes

The final rule contains the following changes from the proposed rule as published in December 1979.

a. *Definition of the term "Disposal".* Commenters noted that the proposed definition of the term "disposal" embodied the contradictory concepts of "permanent emplacement" and possible retrieval for purposes other than resource value. The definition has been modified to reflect usage of the term "disposal" in the rule as the condition in which isolation is required. (§ 60.2(f))

b. *Incidental Uses of Radioactive Materials.* The DOE noted that the proposed rule could have the effect of prohibiting the use of source, special nuclear, and byproduct materials at the site during site characterization and facility construction. The DOE referred to the desirability of being able to use such materials, for example, as radiography sources and radiation monitoring test sources. There may also be a need to employ a small amount of radiactive material for in situ testing in the course of site characterization activities.

The Commission did not intend to restrict DOE's use of radioactive materials for the stated purposes, and has clarified the point by adding a new section, § 60.7, which expressly recognizes that DOE (which is exempt

proposed site should be issued. Thus, the Commission requires in situ testing at depth in the rule. It is conceivable, however, that techniques may be developed to obtain the necessary data at a particular site without in situ testing at depth. In such a case, DOE may request an exemption from the in situ testing at depth requirement. DOE, like any applicant for an NRC license, has the burden of establishing that NRC requirements have been met; and the regulations require DOE to undertake any testing needed to determine the suitability of the site for a geologic repository. Thus, if exploration and in situ testing at depth were not undertaken, DOE would still have the same burden of obtaining and supplying to the Commission information needed to establish the suitability of the site.

c. *Cost Estimates for Site Characterization.* Cost estimates for site characterization cited in the Supplementary Information accompanying the proposed rule were regarded by some commenters as being too low. Much of the data for the cost estimate of $20 million per site was derived from the Teknekron Inc. report, "A Cost Optimization Study for Geologic Isolation of Radioactive Wastes," May 1979, prepared under contract with Battelle Pacific Northwest Laboratories. The NRC staff has reexamined its previous estimate and still believes that figure of $20 million was a realistic estimate for the "at depth" portion of the site characterization program considered at that time. Independent support of this figure has been obtained from the cost summary of $16 million for a program during 1976–1979 analogous to site characterization conducted by the Bureau of Mines at its Environmental Research Facility in Colorado.

The DOE has developed a preliminary design for an underground test facility in New Mexico at which many site characterization activities could be conducted. The estimated cost of the facility was $27 million (1980 dollars). This figure has been confirmed by American Mine Services under contract to NRC. The scope of the DOE preliminary design surpasses the extent of activities suggested for the "at depth" portion of site characterization in the proposed rule. For example, the DOE Site Preliminary Verification Project Plan includes extensive underground mining development. The Commission has come to believe, however, that a facility consisting of two shafts and up to 1,000 feet of tunnels is a more practical arrangement for conducting tests and experiments at depth for site characterization. Therefore, the Commission believes a $25–30 million figure represents the upper limit for the "at depth" portion of site characterization in soft rock. Cost estimates for site characterization including in situ testing at depth in hard rock may range up to 30% more than cost figures for soft rock.

d. *The "Best" Site.* Some commenters suggested that the final rule should require that the site selected by the DOE be the "best". Yet other commenters thought that the Commission was setting an unattainable goal of perfection for the selection of the site for a geologic repository. It remains the Commission's view that the process of multiple site characterization provides a workable mechanism by which the DOE will be able to develop a slate of candidate sites that are among the best that can reasonably be found and from which DOE will select its preferred site.

It generally has been NRC practice to consider only whether a license application meets prescribed criteria. The Commission perceives no reason to adopt a different philsosphy here.

e. *Environmental Impact Statement.* Some commenters believed that the NRC should require that the DOE submit an Environmental Impact Statement (EIS) at the site characterization stage. Other commenters believed that DOE need only submit an Environmental Report or an Envirionmental Assessment for site characterization. In its comment letter on the proposed rule, the DOE stated that a decision to bank or withdraw a site or to conduct a site characterization by more extensive methods such as sinking a shaft will require the preparation of an EIS. In any event, since NRC is undertaking no "major Federal action" in connection with site characterization, it has no statutory basis for prescribing what steps DOE must take in order to be in compliance with NEPA.

The rule requires submission of an Environmental Report along with the Safety Analysis Report at the time of application for a license. If DOE has prepared an EIS that document can be used so long as it contains the information called for by the regulation. However, NRC cannot be bound to accept judgments arrived at by DOE in its EIS.

One commenter suggested that the NRC should prepare an EIS for the rulemaking action. The Commission determined that this was not necessary as part of its review and approval of publication of the proposed rule. Instead, an Environmental Impact Appraisal was prepared for those requirements which might have environmental impacts. Those impacts were found not to be significant. This Environmental Impact Appraisal has recently been updated and no new impact was found to be significant. A copy of the updated appraisal is available for inspection and copying at the Commission's Public Document Room.

f. *State, Local, and Public Participation.* The proposed rule included detailed provisions to ensure extensive opportunities for participation by State and local governments and the general public in the review of the DOE's programs for site selection and site characterization. The consultation role of the States in reviewing applicable NRC regulations and licensing procedures, as well as participation in the licensing process, was treated explicitly in the proposed rule. However, a more formal role of "consultation and concurrence" for States was requested by some commenters. Suggestions were also made that the Commission require the DOE to solicit input from State, Indian tribal and local governments as well as from the general public prior to and during site characterization.

The Commission's views on this subject were set out at length in a report submitted to the Congress on "Means for Improving State Participation in the Siting, Licensing and Development of Federal Nuclear Facilities," NUREG–0539, March 1979, cited in the Supplementary Information accompanying the proposed rule. The concerns of the commenters on broad policy issues such as "consultation and concurrence" would require actions by parties other than the Commission. Within the context of NRC's existing authority, appropriate opportunities for meaningful State and public participation have been developed. No serious deficiencies in these opportunities have been pointed out to the NRC. In addition, the provisions of the NRC's open meeting policy set forth at 43 FR 28058 (June 28, 1978) will also be applied to the licensing of a geologic repository to the extent practicable. Under this policy, generally, all meetings conducted by the NRC technical staff as part of its review of a particular domestic license or permit application will be open to attendance by all parties or petitioners for leave to intervene in the case. The Commission strongly encourages the Director to conduct open meetings prior to a license application to the extent reasonable for matters such as periodic status reports and similar proceedings.

Some of the commenters raised issues that will be covered in the technical criteria; those will be dealt with in connection with the ongoing rulemaking for those criteria.

a. *Site Characterization.* Comments on site characterization straddled the Commission position set forth in the proposed rule. Some commenters agreed with the requirement for multiple site characterization as presented in the proposed rule. Some commenters expressed the opinion that multiple site characterization was not required for the Commission to fulfill its NEPA obligation to consider alternatives. The Commission has carefully reviewed arguments presented by the commenters who stated that multiple site characterization is not necessary. The Commission continues to believe that required multiple site characterization provides the only effective means by which it can make a comparative evaluation as a basis for arriving at a reasoned decision under NEPA. Other commenters believed that the requirements for multiple site characterization were not stringent enough, and suggested that the rule specify the number of geologic media and sites to be characterized by the DOE. The Commission continues to believe that characterization of several sites will prevent a premature commitment by DOE to a particular site, and will assure that DOE's preferred site will be chosen from a slate of candidate sites that are among the best that can reasonably be found. The Commission considers three sites in two geologic media, at least one of which is not salt, to be the minumum number needed to satisfy NEPA. That is, the Commission can foresee no circumstance that would permit it to conclude, on the basis of a more limited investigation, that alternatives have been considered in accordance with the "rule of reason." Further it is the present judgment of the Commission that for purposes of making a reasoned choice there is not sufficient difference between bedded salt and domed salt for them to be considered two distinct alternative media. However, because the "rule of reason" is intrinsically flexible, the Commission does not believe that it would be appropriate for these regulations to specify more than the minimum number or type of geologic media and sites that DOE must characterize during multiple site characterization. What is important is that there be sufficient information for NRC to be able to evaluate real alternatives, in a timely manner, in accordance with NEPA.

Information on plans for considering alternative sites is to be included in the Site Characterization Report. This provision was questioned by some commenters. This information is needed so that any deficiency may be the subject of "specific recommendations" by the Director of the NRC's Office of Nuclear Material Safety and Safeguards, (Director) as provided in § 60.11(e), with respect to additional information that might be needed by the Commission in reviewing a license application in accordance with NEPA.

Another commenter raised the issue that in addition to the need to consider alternatives under the provisions of NEPA, the need for characterizing several sites in a variety of media is also justified by NRC's obligation under the Atomic Energy Act to protect public health and safety. The Commission recognizes that, under the provisions of the Atomic Energy Act, a consideration of alternatives might indeed be appropriate, where necessary or desirable to protect health. (Section 161g.) The Commission cannot say at this point that an examination of alternatives would be essential for this purpose. The Commission anticipates that its fundamental licensing inquiry in the context of evaluating radiological safety issues will be directed to determining whether the activities proposed by the DOE can be carried out in a manner consistent with generally applicable environmental standards established by the Environmental Protection Agency.

The Commission also continues to believe that waste form research is an appropriate topic for treatment in the Site Characterization Report, as the discussion may lead to specific recommendations by the Director, and, as well, contribute to early examination and broader understanding of possible waste form/host rock interactions. Further, wording of § 60.11(a) has been changed from "waste form" to "waste form and packaging" to convey better the concept that the NRC will seek information relating to the interaction of the waste as emplaced (hence including packaging) with the host rock.

In response to one commenter's suggestion that the Site Characterization Report be made to NRC on a site by site basis, § 60.11(a) has been revised to require DOE to submit a separate Site Characterization Report for each site to be characterized.

There were also suggestions that the distinction between site characterization and screening activities be drawn more sharply. However, because the activities needed prior to characterization may depend on a variety of factors peculiar to the site and geologic medium, the Commission has concluded that greater precision might be unduly restrictive.

The DOE requested clarification of the term "site". Definitions of both the terms "site" and "medium" will be set forth when the technical criteria are published.

b. *In Situ Testing at Depth.* Several commenters supported the Commission view on in situ testing at depth. Some commenters, noting the importance of in situ testing at depth, suggested that the rule require the DOE to include in situ testing at depth in its site characterization program. The U.S. Geological Survey (USGS) supported required in situ testing at depth at a number of sites prior to NRC adjudicatory hearings, so that such hearings could proceed on the basis of critical, site-specific data on the candidate host rocks and environs rather than on inferences derived from a limited number of drill holes supplemented by geophysical techniques. The USGS expressed the opinion that direct observation and in situ testing of host media will be the only way to characterize sites with confidence. Several other commenters objected to the Commission suggestion that in situ testing at depth may be necessary. The possibility of in situ testing at depth after a preferred repository site has been selected was also suggested.

The Commission, like the USGS, believes that in situ testing at depth[3] is an essential technique for DOE to obtain sufficient data to determine whether and to what extent the surrounding geologic medium is suitable for hosting a geologic repository. This belief is supported by the ever-present possibility of lateral changes in the properties of the host rock and the possible presence of inhomogeneities of too small a scale to be detected by remote or borehole techniques. Moreover, in order for NRC to be able to conclude that the alternatives to DOE's preferred site are in fact reasonable alternatives for the intended purpose, in situ testing at depth is essential to characterizing alternative sites as well. The NRC will then be able to determine, after considering all relevant environmental factors as contemplated by NEPA, whether a construction authorization at DOE's

[3] The Commission interprets the phrase "in situ testing at depth" to mean the conduct of those geophysical, geochemical, hydrologic, and/or rock mechanics tests performed from a test area at the base of a shaft excavated to the proposed depth of a potential repository in order to determine the suitability of a particular site for a geologic repository.

FINAL RULE- PROCEDURAL

Rules and Regulations

Federal Register
Vol. 46, No. 37
Wednesday, February 25, 1981

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 60, and 70

Disposal of High-Level Radioactive Wastes in Geologic Repositories: Licensing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (Commission or NRC) is publishing a final rule on the disposal of high-level radioactive wastes at geologic repositories. The rule sets forth requirements applicable to the Department of Energy for submitting an application for a license and specifies the procedures which the Commission will follow in considering such an application. The rule also sets forth provisions for consultation and participation in the license review by State, local, and Indian tribal governments.

EFFECTIVE DATE: March 27, 1981.

FOR FURTHER INFORMATION CONTACT: I. C. Roberts, Assistant Director for Siting Standards, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 443-5985.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1979, the Nuclear Regulatory Commission published for comment a proposed rule setting forth procedures for licensing geologic high-level radioactive waste (HLW) repositories to be constructed and operated by the Department of Energy (DOE) (44 FR 70408). The proposed rule superseded the proposed General Statement of Policy published for comment in November 1978 (43 FR 53869). Public comment on the proposed rule (10 CFR Part 60) was received from thirty-four groups and individuals. A number of changes and clarifications have been made in the rule as a result of comments received. This rule contains only the procedural requirements for licensing. The technical criteria against which the license application will be reviewed are still under development. The current staff thinking on the technical criteria was reflected in an Advance Notice of Proposed Rulemaking and draft technical criteria published for public comment on May 13, 1980 (45 FR 31393).

The Commission has made a formal determination that the final rule 10 CFR Part 60 satisfies the criteria for the approval of significant regulations set out in section 2(d) of Executive Order 12044.

Authority

Sections 202 (3) and (4) of the Energy Reorganization Act of 1974, as amended, provide the NRC with licensing and regulatory authority regarding DOE facilities used primarily for the receipt and storage [1] of the high-level radioactive wastes resulting from activities licensed under the Atomic Energy Act and certain other long-term, high-level waste storage facilities of the DOE. Pursuant to that authority, the Commission is promulgating regulations appropriate for licensing geologic disposal of HLW by the DOE. The requirement in the rule that DOE submit a Site Characterization Report in advance of performing exploration activities also implements Section 14(a) of the NRC Authorization Act of 1979 (Pub. L. 95-601).[2] DOE is responsible for developing the methods and technology for the permanent disposal of high-level radioactive waste in a Federal repository, and for submitting a license application for a potential repository. The licensing procedures in this rule will be supplemented by technical criteria which will be developed by the Commission in the light of such generally applicable environmental standards as may have been established by the Environmental Protection Agency under Reorganization Plan No. 3 of 1970.

Questions have been raised in the past about the authority of NRC to regulate the construction of the waste repository. DOE activities that take place before an application if filed and may affect the long-term safety of the repository obviously may preclude receipt of a construction authorization. The Commission has concluded that NRC may use its powers to regulate construction of the repository. Accordingly, the Commission may, if necessary, issue orders to secure compliance with construction authorization conditions and to protect the integrity of the repository. In addition, failure to comply with the conditions of any construction authorization may also be grounds for denial of a license to receive material.

Comments

A total of thirty-four groups and individuals commented on the proposed rule, addressing a variety of issues. Most of the commenters viewed the proposed rule as a significant improvement over the proposed General Statement of Policy, and, generally, the comments were supportive of the principles and procedures outlined in the proposed rule. The principal comments received related to multiple site characterization, in situ testing at depth, cost estimates for site characterization, whether the rule should require that the site selected by DOE be the "best", whether an environmental impact statement (EIS) should be required for site characterization, whether the Commission should prepare an EIS for this rulemaking action, opportunities for State, local and public participation, formal public hearings, the preliminary nature of some information to be included in an application for construction authorization, and the termination of a license following decommissioning. Summaries of the comments received on these issues are presented below. Copies of the comments and an analysis of them by the NRC staff are available in the Commission's Public Document Room.

[1] The Commission interprets "storage" as used in the Energy Reorganization Act to include disposal.

[2] Section 14(a) reads as follows: Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, non-high-level radioactive wastes including transuranium contaminated wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal.

thereof) or for an affected Indian Tribe shall include in the request or other submission, or at the request of the Commission, a statement of the basis of his or her authority to act in such representative capacity.

Dated at Washington, DC, this 22d day of July 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86-16898 Filed 7-29-86; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 500, 501, and 522

[No. 86-755]

Organization and Operation

Dated: July 24, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: By these amendments the Federal Home Loan Bank Board ("Board") establishes a new Office of Regulatory Policy, Oversight, and Supervision ("ORPOS") as part of the Federal Home Loan Bank System. This organizational restructuring is a follow-up to the Board's delegation of field examination functions to its Principal Supervisory Agents. It will enable the Board to exercise more efficient oversight and control of the examination/supervision functions as performed by the Principal Supervisory Agents and their staffs at the Federal Home Loan Banks ("Banks").

EFFECTIVE DATE: September 27, 1986.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Attorney, Administration Division, Office of General Counsel, (202) 377-6550, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By its Resolution No. 85-186 of March 14, 1985, the Board delegated to its Principal Supervisory Agent at each Federal Home Loan Bank the functions of examining institutions subject to the Board's jurisdiction. The Board noted that it had previously delegated its supervisory functions to the Banks and found on the basis of recommendations of a Task Force composed of both Bank and Board staff that it was desirable for field examination functions also to be performed by Bank personnel assigned to and under the direction of the Principal Supervisory Agents. The Board noted that such delegation of function was within its authority to delegate performance of any function of the Board except with regard to promulgation of rules and regulations and for certain adjudications.

Upon consideration of recommendation of the staff and a second Task Force charged with making recommendations for strengthening the Office of Examinations and Supervision following the field reorganization, the Board has determined that its purpose of improving the effectiveness of its examination and supervisory functions would be served by establishing within the Bank System a new Office of Regulatory Policy, Oversight, and Supervision through which to exercise its statutory responsibility to oversee, control, and, where necessary, improve those functions. Basic to this determination was the Board's finding that such restructuring would give it the managerial flexibility it urgently needs to respond more successfully to the complex challenges posed by present thrift industry conditions. To take advantage of the economies and efficiencies of combined operations, it is the Board's intention that the new Office of Regulatory Policy, Oversight, and Supervision will share, to the extent practicable, accounting, budgeting, payroll, personnel, and other administrative services with the Office of Finance.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because these amendments relate to urgently needed flexibility in Board organization, management, and personnel, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Parts 500, 501, and 522

Organization and channelling of functions, Claims, Conflict of interest, Federal home loan banks.

Accordingly, the Board hereby amends Parts 500 and 501, Subchapter A, and Part 522, Subchapter B, Chapter V, Title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER A—GENERAL

PART 500—ORGANIZATION AND CHANNELLING OF FUNCTIONS

1. The authority citation for Part 500 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 402, 48 Stat. 1256, as amended (12 U.S.C. 1725); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

§ 500.18 [Removed]

2. Remove § 500.18.

§ 500.40 [Amended]

3. Amend § 500.40 by removing the authority citation located at the end of the section.

PART 501—OPERATIONS

4. The authority citation for Part 501 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended, (12 U.S.C. 1437); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

§ 501.11 [Amended]

5. Amend § 501.11 by inserting immediately after the word "supervising" in the second sentence the words "and examining".

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 522—ORGANIZATION OF THE BANKS

6. The authority citation for Part 522 is revised to read as follows:

Authority: Sec. 5 B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6-7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426-1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402-403, 407, 48 Stat. 1256-1257, 1260, as amended (12 U.S.C. 1725-1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 6101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* U.S.C.A. 1437 App. (West Supp. 1986).

7. Add a new § 522.90 to read as follows:

§ 522.90 Office of Regulatory Policy, Oversight, and Supervision.

(a) *General.* (1) An Office of Regulatory Policy, Oversight, and Supervision ("ORPOS") is hereby established, which shall be located in the Washington, DC, metropolitan area, and shall perform the functions set forth in paragraph (b) of this section.

(2) ORPOS shall be headed by a Director, who shall have responsibility for the performance of its functions. The Board shall appoint and fix the compensation of the Director. The Director may, with the consent of the Board, select one or more Deputy Directors, Associate Directors, or Assistant Directors. As authorized in writing by the Director, the Deputy,

making recommendations or stating objections to DOE's site characterization program. The Director shall invite public comment on any comments which the Director makes to DOE upon review of the DOE semiannual reports or on any other comments which the Director makes to DOE on site characterization.

(j) The Director shall transmit copies of the site characterization analysis and all comments to DOE made by the Director under this section to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian Tribe. When transmitting the site characterization analysis under this paragraph, the Director shall invite the addressees to review and comment thereon.

(k) All correspondence between DOE and the NRC under this section, including the reports described in paragraph (g), shall be placed in the Public Document Room.

(l) The activities described in paragraphs (a) through (k) of this section constitute informal conference between a prospective applicant and the staff, as described in § 2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as amended. Accordingly, neither the issuance of a site characterization analysis nor any other comments of the Director made under this section constitutes a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards, other presiding officers, or the Director, in any such proceeding.

9. Subpart C is revised to read as follows:

Subpart C—Participation by State Governments and Affected Indian Tribes

Sec.
60.61 Provision of information.
60.62 Site review.
60.63 Participation in license reviews.
60.64 Notice to States.
60.65 Representation.

Subpart C—Participation by State Governments and Affected Indian Tribes

§ 60.61 Provision of information.

(a) The Director shall provide to the Governor and legislature of any State in which a geologic repository operations area is or may be located, and to the governing body of any affected Indian Tribe, timely and complete information regarding determinations or plans made by the Commission with respect to the site characterization, siting, development, design, licensing, construction, operation, regulation, permanent closure, or decontamination and dismantlement of surface facilities, of such geologic repository operations area.

(b) For purposes of this section, a geologic repository operations area shall be considered to be one which "may be located" in a State if the location thereof in such State has been described in a site characterization plan submitted to the Commission under this part.

(c) Notwithstanding paragraph (a) of this section, the Director is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(d) Copies of all communications by the Director under this section shall be placed in the Public Document Room, and copies thereof shall be furnished to DOE.

§ 60.62 Site review.

(a) Whenever an area has been approved by the President for site characterization, and upon request of a State or an affected Indian Tribe, the Director shall make NRC staff available to consult with representatives of such States and Tribes.

(b) Requests for consultation shall be made in writing to the Director.

(c) Consultation under this section may include:

(1) Keeping the parties informed of the Director's views on the progress of site characterization.

(2) Review of applicable NRC regulations, licensing procedures, schedules, and opportunities for State and Tribe participation in the Commission's regulatory activities.

(3) Cooperation in development of proposals for State and Tribe participation in license reviews.

§ 60.63 Participation in license reviews.

(a) State and local governments and affected Indian Tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter. A State in which a repository for high-level radioactive waste is proposed to be located and any affected Indian Tribe shall have an unquestionable legal right to participate as a party in such proceedings.

(b) In addition, whenever an area has been approved by the President for site characterization, a State or an affected Indian Tribe may submit to the Director a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The proposal may be submitted at any time and shall contain a description and schedule of how the State or affected Indian Tribe wishes to participate in the review, or what services or activities the State or affected Indian Tribe wishes NRC to carry out, and how the services or activities proposed to be carried out by NRC would contribute to such participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NRC, such as establishing additional public document rooms or employment or exchange of State personnel under the Intergovernmental Personnel Act.

(c) The Director shall arrange for a meeting between the representatives of the State or affected Indian Tribe and the NRC staff to discuss any proposal submitted under paragraph (b) of this section, with a view to identifying any modifications that may contribute to the effective participation by such State or Tribe.

(d) Subject to the availability of funds, the Director shall approve all or any part of a proposal, as it may be modified through the meeting described above, if it is determined that:

(1) The proposed activities are suitable in light of the type and magnitude of impacts which the State or affected Indian Tribe may bear;

(2) The proposed activities:

(i) Will enhance communications between NRC and the State or affected Indian Tribe;

(ii) Will make a productive and timely contribution to the review; and

(iii) Are authorized by law.

(e) The Director will advise the State or affected Indian Tribe whether its proposal has been accepted or denied, and if all or any part of proposal is denied, the Director shall state the reason for the denial.

(f) Proposals submitted under this section, and responses thereto, shall be made available at the Public Document Room.

§ 60.64 Notice to States.

If the Governor and legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and legislature separately.

§ 60.65 Representation.

Any person who acts under this subpart as a representative for a State (or for the Governor or legislature

DOE shall defer the sinking of such shafts until such time as there has been an opportunity for Commission comments thereon to have been solicited and considered by DOE.

§ 60.17 Contents of site characterization plan.

The site characterization plan shall contain—

(a) A general plan for site characterization activities to be conducted at the area to be characterized, which general plan shall include:

(1) A description of such area, including information on quality assurance programs that have been applied to the collection, recording, and retention of information used in preparing such description.

(2) A description of such site characterization activities, including the following—

(i) The extent of planned excavations;

(ii) Plans for any onsite testing with radioactive material, including radioactive tracers, or nonradioactive material;

(iii) Plans for any investigation activities that may affect the capability of such area to isolate high-level radioactive waste;

(iv) Plans to control any adverse impacts from such site characterization activities that are important to safety or that are important to waste isolation; and

(v) Plans to apply quality assurance to data collection, recording, and retention.

(3) Plans for the decontamination and decommissioning of such area, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities, if such area is determined unsuitable for application for a construction authorization for a geologic repository operations area;

(4) Criteria, developed pursuant to section 112(a) of the Nuclear Waste Policy Act of 1982, to be used to determine the suitability of such area for the location of a geologic repository; and

(5) Any other information which the Commission, by rule or order, requires.

(b) A description of the possible waste form or waste package for the high-level radioactive waste to be emplaced in such geologic repository, a description (to the extent practicable) of the relationship between such waste form or waste package and the host rock at such area, and a description of the activities being conducted by DOE with respect to such possible waste form or waste package or their relationship; and

(c) A conceptual design for the geologic repository operations area that takes into account likely site-specific requirements.

§ 60.18 Review of site characterization activities.[2]

(a) The Director shall cause to be published in the Federal Register a notice that a site characterization plan has been received from DOE and that a staff review of such plan has begun. The notice shall identify the area to be characterized and the NRC staff members to be consulted for further information.

(b) The Director shall make a copy of the site characterization plan available at the Public Document Room. The Director shall also transmit copies of the published notice of receipt to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian Tribe. The Director shall provide an opportunity, with respect to any area to be characterized, for the State in which such area is located and for affected Indian Tribes to present their views on the site characterization plan and their suggestions with respect to comments thereon which may be made by NRC. In addition, the Director shall make NRC staff available to consult with States and affected Indian Tribes as provided in Subpart C of this part.

(c) The Director shall review the site characterization plan and prepare a site characterization analysis with respect to such plan. In the preparation of such site characterization analysis, the Director may invite and consider the views of interested persons on DOE's site characterization plan and may review and consider comments made in connection with public hearings held by DOE.

(d) The Director shall provide to DOE the site characterization analysis together with such additional comments as may be warranted. These comments shall include either a statement that the Director has no objection to the DOE's site characterization program, if such a statement is appropriate, or specific objections with respect to DOE's program for characterization of the area concerned. In addition, the Director may make specific recommendations pertinent to DOE's site characterization program.

(e) If DOE's planned site characterization activities include onsite testing with radioactive material, including radioactive tracers, the Director's comments shall include a determination regarding whether or not the Commission concurs that the proposed use of such radioactive material is necessary to provide data for the preparation of the environmental reports required by law and for an application to be submitted under § 60.22 of this part.

(f) The Director shall publish in the Federal Register a notice of availability of the site characterization anaylsis and a request for public comment. A reasonable period, not less than 90 days, shall be allowed for comment. Copies of the site characterization analysis and of the comments received shall be made available at the Public Document Room.

(g) During the conduct of site characterization activities, DOE shall report not less than once every six months to the Commission on the nature and extent of such activities and the information that has been developed, and on the progress of waste form and waste package research and development. The semiannual reports shall include the results of site characterization studies, the identification of new issues, plans for additional studies to resolve new issues, elimination of planned studies no longer necessary, identification of decision points reached and modifications to schedules where appropriate. DOE shall also report its progress in developing the design of a geologic repository operations area appropriate for the area being characterized, noting when key design parameters or features which depend upon the results of site characterization will be established. Other topics related to site characterization shall also be covered if requested by the Director.

(h) During the conduct of site characterization activities, NRC staff shall be permitted to visit and inspect the locations at which such activities are carried out and to observe excavations, borings, and in situ tests as they are done.

(i) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization. In particular, such comments shall be made whenever the Director, upon review of comments invited on the site characterization analysis or upon review of DOE's semiannual reports, determines that there are substantial new grounds for

[2] In addition to the review of site characterization activities specified in this section, the Commission contemplates an ongoing review of other information on site investigation and site characterization, in order to allow early identification of potential licensing issues for timely resolution. This activity will include, for example, a review of the environmental assessments prepared by DOE at the time of site nomination, and review of issues related to long lead time exploratory shaft planning and procurement actions by DOE prior to issuance of site characterization plans.

Office of Management and Budget-Approval No. 3150-0127.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule relates to the licensing of only one entity, the U.S. Department of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

Issuance

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR Part 2 and 10 CFR Part 60.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332) Section 2.700a, also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579 as amended (42 U.S.C. 2039). Subpart K also issued under Sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1437 (42 U.S.C. 2135).

2. Section 2.714(d) is revised to read as follows:

§ 2.714 Intervention.

* * * * *

(d) The Commission, the presiding officer, or the atomic safety and licensing board designated to rule on petitons to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by the State in which such area is located and by any affected Indian Tribe as defined in Part 60 of this chapter. In all other circumstances, such ruling body or officer shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

3. The authority citation for Part 60 is revised to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97-425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of Sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.71 to 60.75 are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. Section 60.1 is revised to read as follows:

§ 60.1 Purpose and scope.

This part prescribes rules governing the licensing of the U.S. Department of Energy to receive and possess source, special nuclear, and byproduct material at a geologic repository operations area sited, constructed, or operated in accordance with the Nuclear Waste Policy Act of 1982. This part does not apply to any activity licensed under another part of this chapter.

5. Section 60.2 is amended by removing the definitions of "Indian Tribe" and "Tribal Organization" and inserting, in the appropriate alphabetical location, a definition of the term "affected Indian Tribe" to read as follows:

§ 60.2 Definitions.

* * * * *

"Affected Indian Tribe" means any Indian Tribe (1) within whose reservation boundaries a repository for high-level radioactive waste or spent fuel is proposed to be located; or (2) whose Federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of Congressionally ratified treaties or other Federal law may be substantially and adversely affected by the locating of such a facility; *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the Tribe, that such effects are both substantial and adverse to the Tribe.

* * * * *

§ 60.10 [Redesignated as § 60.15]

6. Section 60.10 is redesignated as § 60.15. In new § 60.15, paragraph (c) is revised to read as follows:

§ 60.15 Site characterization.

* * * * *

(c) As provided by Sec. 113 of the Nuclear Waste Policy Act (42 U.S.C. 10133), DOE is also required to conduct a program of site characterization, including in situ testing at depth, with respect to alternate sites.

* * * * *

§ 60.11 [Removed]

7. Section 60.11 is removed.

8. Sections 60.16 through 60.18 are added to read as follows:

§ 60.16 Site characterization plan required.

Before proceeding to sink shafts at any area which has been approved by the President for site characterization, DOE shall submit to the Director, for review and comment, a site characterization plan for such area.

Policy Act of 1982." Also, the reference in § 60.17(a)(4) to a geologic repository that is not subject to the Waste Policy Act has been deleted.

Definition of "Affected Indian Tribe"

In response to comments, the final rule defines the term "affected Indian Tribe" so as to include, for purposes of these regulations, Indian Tribes having off-reservation rights arising out of "other Federal law" as well as "out of Congressionally ratified treaties", provided that specified findings have been made by the Secretary of the Interior. This would place all Indian Tribes on the same footing as long as their rights arise under Federal law irrespective of the legal form in which such rights may have been documented.

Authority Reference for Site Characterization

One commenter noted that the reference to former 10 CFR § 51.40, in connection with the requirement that DOE is to conduct a program to characterize multiple sites, has been superseded by the NWPA. In response to that comment, § 60.15(c) has been changed to indicate that sec. 113 of the NWPA (42 U.S.C. 10133) is the basis for the site characterization program requirement. The proposed amendments had simply renumbered this section from §§ 60.10 to 60.15 without change.

Authority for Early Site Review by NRC

In response to the comment that the NRC should not rely on the DOE-NRC Procedural Agreement as authority for early site review, the footnote to § 60.18 is revised to delete the reference to the DOE-NRC Procedural Agreement. The Commission relies upon the statutes listed in the authority citation.

Public Comment on NRC Comments to DOE on Site Characterization

On comment stated that issues arising during site characterization could be more readily brought to the Commission's attention by establishing a notice and public comment process for the NRC semi-annual comments to DOE on site characterization. Just as the Commission will solicit comments on its comments on DOE's initial SCP, it wants to allow for public comment on any Commission comments on DOE's semi-annual reports. Section 60.18(i) has therefore been changed to include a provision that the Director shall invite public comment on comments which the Director makes to DOE upon review of the DOE semi-annual reports or on any other comments which the Director makes to DOE on site characterization.

Obtaining Host States and Indian Tribe Views on the SCP

Although the Commission continues to find preparation of the draft SCA to be unnecessary, some recognition of its intention to welcome the views of host States and affected Indian Tribes is warranted. Accordingly § 60.18(b) has been changed to provide an opportunity for the host State and affected Indian Tribes for each site to be characterized to present their views on the DOE SCP and their suggestions with respect to NRC comments thereon.

Use of Radioactive Tracers During Site Characterization

One issue raised in the comments related to the scope of the Commission's obligations to concur in the necessity for DOE to use radioactive materials during site characterization. It might be argued that the statutory provision (NWPA § 113(c)(2)(A)) was intended to apply only to the emplacement of discrete packages, for testing purposes, into excavated locations in the respository. However, in view of the unqualified language that "the Secretary may not use *any* radioactive material at a candidate site unless the Commission concurs that such use is necessary" (emphasis supplied), the regulation has been modified to state expressly that the site characterization plan must also identify any plans DOE may have involving the use of radioactive tracer materials. See § 60.17(a)(2)(ii). Any tracer tests described in the site characterization plans would be subject to the review and concurrence procedure specified in § 60.18(e).

Consultation and Site Review

As stated in the notice of proposed rulemaking, prior provisions pertaining to participation of Indian Tribes have been incorporated in the substantive provisions applicable to States. Further editorial changes (i.e., references to "Tribes") have been made to accomplish this purpose in § 60.62(c).

Separate Views of Commissioner Asselstine

I approve the procedural amendments to 10 CFR 60 in part and disapprove in part. I believe the Commission has gone too far in deleting two very important provisions from the Commission's original procedural rule. These two important elements are: (1) The requirement for NRC review of the Department of Energy's site screening and selection process for a high-level radioactive waste repository; and (2) the requirement for NRC issuance of a draft site characterization analysis of DOE's site characterization plan for public comment, and staff analysis of those comments.

The Commission issued its licensing procedures for a high-level radioactive waste repository on February 25, 1981. These licensing procedures included NRC review of DOE's site screening and selection process and NRC issuance of a draft site characterization analysis for public comment. These were two provisions which the Commission at the time considered to be important for it to carry out effectively its licensing responsibility of a high-level radioactive waste repository. The Nuclear Waste Policy Act (NWPA) was enacted in 1982. The Congress was aware of NRC's high-level waste licensing procedures when it passed the NWPA. Congress did not object to these important provisions. However, the Commission is now taking the position that because these provisions are not required by the NWPA, then the Commission should delete them from its regulations. The fact that the new law is silent as to those two provisions does not serve as a justification for deleting these provisions from the Commission's regulations.

I believe the Commission should retain these two very important provisions in 10 CFR Part 60. The Commission's health and safety and environmental protection responsibilities warrant NRC review of DOE's site screening and selection process. I also believe that NRC issuance of its site characterization analysis for public comment will contribute to a more rigorous and thorough review of the DOE site characterization plans, which in turn, will enhance public confidence. What the Commission considered important to carry out its health and safety responsibilities in 1981 is still important and has not been changed by the NWPA.

Environmental Impact

Pursuant to section 121(c) of the Nuclear Waste Policy Act, this rule does not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of section 102(2) of such act.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the

relate to the Commission's NEPA obligations at the time DOE applies for a license.

It appears that, under NWPA, NRC prelicensing review of NEPA issues was, in fact, not intended to be extensive. Aside from its concurrence in the siting guidelines, the statutory scheme calls for NRC participation to commence with the filing of the site characterization plans by DOE. Furthermore, unless DOE fails to follow the procedures for identifying sites to be characterized, as specified in NWPA, there would be no basis or authority to insist, for NEPA purposes, that particular sites be excluded or that other sites be selected for characterization.

It is important to proceed with the present actions without awaiting other changes to Part 51 that will be prepared in the light of the NWPA. This would allow for changes related to site characterization to be implemented in a timely fashion as DOE prepares its site characterization plans.

The Commission acknowledges that the authority citation for Part 60 includes a reference to NEPA; that is appropriate because the regulation specifies NEPA licensing findings, 10 CFR 60.31(c), 60.41(d), and contemplates the inclusion, in a construction authorization and a license, of conditions to protect environmental values, 10 CFR 60.32(a), 60.42(a). These sections, in essence, merely require that the construction and operation of a repository comply with NEPA requirements. They do not represent a reliance on NEPA authority as a significant underpinning for Part 60. Part 51 of NRC regulations, which deals with NEPA implementation, will however need to be changed—specifically to (1) define the alternatives that must be discussed in an environmental impact statement, (2) exempt the promulgation of NRC licensing requirements and criteria from environmental review under NEPA, and (3) set out procedures that will be followed by the Commission in determining whether or not to adopt the DOE EIS. The alternatives are, for the most part, prescribed by NWPA. The exemption of licensing requirements from environmental review is also an explicit feature of that Act. The procedures for adoption of the DOE environmental impact statement will be governed by NWPA and the regulations of the Council on Environmental Quality. These changes to Part 51 will be needed in order to conform NRC's licensing process to applicable law. Nothing in the present action impairs the Commission's ability to make the required changes to Part 51 or otherwise to meet its NEPA obligations. Thus, in developing this current amendment the Commission has specifically considered whether any procedures might be needed during the current site screening process to assure meeting its ultimate NEPA responsibilities. The Commission concludes that they are not. Nothing in the upcoming Part 51 changes will affect early site screening involvement. Accordingly, this rule is separable from the amendments to be proposed to Part 51. It is needed now by DOE, and there would be no justification for delay in promulgating it.

e. Party Status for Host State

The point was raised that a host State is entitled to full party status at the outset in NRC licensing proceedings and should have the rights of such a party. An absolute right of participation in NRC licensing proceedings should be declared by 10 CFR Part 60.

Under section 189(a) of the Atomic Energy Act, 42 U.S.C. 2239, a person "whose interest may be affected" is entitled to be admitted to a licensing hearing as a party. Under this statutory provision, there can be no question that the host State has a legal right to be a party. Nevertheless, as in any judicial or administrative proceeding, certain rules of pratice are essential in order for the party's interest in a matter, its contentions with respect thereto, and its claims for relief, to be made a matter of record.

Rights of participation in NRC licensing proceedings are referenced in 10 CFR 60.63. The test of standing are set out in § 2.714. These tests are clearly met for host State participation. The standing tests would be met for affected Indian Tribes as well. (It is also noted that States and arguably affected Indian Tribes can participate under 10 CFR 2.715 without having to take a position on issues by supplementing their intervention petition with contentions as required by § 2.714.) In response to the comments received, the final rule assures that host States and affected Indian Tribes will be permitted to intervene. This has been accomplished by amending 10 CFR 2.714(d). A conforming change is also incorporated in § 60.63(a).

It will not be necessary for such a party to demonstrate its standing, as would otherwise be the case, by a showing of its right under the Atomic Energy Act to be made a party, the nature and extent of its property, financial, or other interest in the proceeding, and the possible effect of any order which may be entered in the proceeding on its interest. Under the amended rule, States and affected Indian Tribes would have unquestionable legal right to full party status which includes, with respect to all matters affecting its interest, the rights to introduce evidence, put on witnesses, cross-examination, full notice and service of all pleadings, full rights of discovery, and standing to appeal. It should also be noted that non-host States may also participate in licensing proceedings as parties to the extent they meet the customary tests of standing, or as interested States.

Changes to the Proposed Amendments

In addition to changes discussed above, the final rule contains the following substantive changes from the proposed rule as published on January 17, 1985.

Authority Citation

Section 14(a) of Pub. L. 95-601, 42 U.S.C. 2021a would require that DOE notify the Commission as early as possible after commencement of planning for a particular repository. The Commission was directed to notify States in turn. As implied by the preamble to the proposed rule, the Commission considers these requirements to have been superseded by NWPA. The authority citation has been modified accordingly.

Exclusion of Defense Waste Facilities

The Commission's licensing authority extends to two different classes of high-level waste disposal facilities: repositories used primairily for civilian waste (including spent nuclear fuel) and facilities for defense wastes. Energy Reorganization Act of 1974, sec. 202, 42 U.S.C. 5842. NWPA applies only to some of these facilities—namely, those used at least in part for civilian wastes (i.e., not exclusively for defense wastes). Sec. 8(c), 42 U.S.C. 10107. A commenter suggested that the pre-NWPA procedures should expressly be retained for defense-only facilities, as they were not covered by NWPA and the statute accordingly did not support any change in NRC requirements. The point has merit. However, in accordance with the procedures set out in section 8(b) of NWPA, the President has now determined that the development of repository for the disposal of defense HLW is not required. There is thus no longer any need for regulations dealing specifically with a defense-waste-only repository. To reflect this conclusion, and clarify the scope of the regulations, Section 60.1 is being revised so as to limit the application of the part to facilities "sited, constructed, or operated in accordance with the Nuclear Waste

does not contemplate a formal comment analysis.)

To furnish additional assurance to the host State and affected Indian Tribes that their views will be considered in NRC's preparation of its SCA, a provision has been added to the final regulation providing an opportunity, before publication of the SCA by NRC, for those parties to present their views on the DOE SCP and suggestions with respect to NRC comments thereon.

b. Site Selection Information

Some commenters opposed the deletion of information concerning DOE's site screening and selection process from the SCP contents. Some commenters also commented unfavorably on a perceived lack of any NRC review of DOE's site screening and selection process. A few commenters supported the deletion of such information from the SCPs.

The Commission has carefully reviewed the arguments presented by the commenters who stated that site selection information should still be included in the SCPs. The Commission continues to believe that such information is neither appropriate nor required in an SCP.

In regard to the generalized concern that NRC should be involved in the site selection process, it is noted that the NRC has played an important role in this process and will continue to do so. The sites under consideration for nomination have been the subject of continuous scrutiny by the NRC staff to identify licensing issues at the earliest possible stage. Available data are examined on a regular basis and site specific documents such as the environmental assessments are carefully reviewed. There are also activities specified by the NWPA which afford the NRC an opportunity to directly influence the site selection process. These are NRC concurrence in DOE's siting guidelines and review and comments on the site characterization plans. NRC expects that, under the EIS scoping process pursuant to CEQ rules, DOE will keep NRC fully and currently informed of its plans for implementation. We also expect to review and comment on DOE's scoping documents and activities for implementing NEPA in the repository program which are to be developed pursuant to CEQ rules, and to comment on DOE's EIS.

Thus, the issue of concern in this rulemaking is not whether the Commission should be involved in the DOE site screening and selection process generally. It is, more specifically, the scope of the information to be included in the DOE submission. The NWPA, while generally conforming to the earlier NRC regulation, omitted the provisions dealing with NRC review of site selection matters. The Commission construes this action as an indication that the site selection issues previously dealt with in Part 60 were to be separated from the site characterization reports and dealt with, instead, in the environmental assessments. Under the NWPA, the Commission's role in the review of DOE's site characterization plans is to determine whether they are appropriate in light of the Commission's regulations. Attention will be directed toward the adequate of the characterization of a particular site; and this is different from, and not dependent upon, the considerations that led to the selection of that site.

c. Shaft Sinking

Some commenters suggested that the regulation should be amended to require that DOE may not proceed to characterize sites by sinking shafts until NRC and State review and comment upon the SCP are complete. One commenter suggested that the regulation be clarified to specify that completion of NRC review is not a condition precedent for shaft sinking. The Commission agrees with the commenters who regard NWPA as requiring that DOE defer the sinking of shafts at least until such time as there has been an opportunity for pertinent comments on shaft sinking to have been solicited and considered by DOE. As stated in the preamble to the proposed rule, "The Commission believes that Congress intended that DOE should provide the plans sufficiently far in advance so that comments may be developed and submitted back to DOE early enough to be considered when shaft sinking occurs, and all times thereafter." The question, therefore, is not whether the Commission agrees with the objective of those commenters to defer shaft sinking until after comments on the SCP have been received by DOE. The issue, rather, was whether the Commission should include in its own regulations an interpretation of the obligations of DOE under the statute. The Commission has concluded that it should do so, in the interests of fulfilling its own responsibilities more effectively. The Commission has stressed the importance of evaluating alternatives to major design features that are important to waste isolation, see 10 CFR 60.21(c)(1)(ii)(D), and in the case of the design and location of the shafts this can only be done prior to their sinking. It is important to the Commission that the comments which it may provide to DOE with respect to shaft sinking be taken into account as the Department proceeds.

The Commission observes that the incorporation of this language into the regulation should have no effect on the repository program. If the established working arrangements (including the Procedural Agreement, 48 FR 51676, described in the preamble to the proposed rule) provide the anticipated information exchange, NRC would in fact be able to review and comment in a timely fashion during DOE's early planning processes on those issues that may have a bearing upon DOE's decision to proceed with, or delay, the sinking of repository shafts. Moreover, the Commission is aware that DOE itself has indicated its intention to wait until it has completed a review of comments before proceeding to sink shafts.

d. Simultaneous Promulgation of Amendments

Some commenters recommended that all revisions to Part 60 and Part 51 to conform them to the NWPA should be promulgated simultaneously. In particular, they recommended that the revisions concerning NEPA requirements accompany the revisions currently being promulgated. They believe that this would assure that a comprehensive and integrated approach is taken and any confusion regarding NWPA and NEPA requirements would be eliminated. They argue that much of Part 60 now rests on NEPA authority so that failure to include NEPA in the currently proposed revision casts a cloud over the Commission's view of its authority to carry out early site reviews.

The Commission has not put off considering its obligations under NEPA as modified by the NWPA. In developing these changes to the regulation, the Commission has specifically considered whether any procedures might be needed at the site screening or characterization stage, so as to assure that the Commission would be able to meet its ultimate NEPA responsibilities. The Commission concludes that they are not.

The Commission's Part 51 regulations govern the Commission's responsibilities for conducting environmental reviews associated with its licensing and regulatory functions. Section 121(c) of NWPA, 42 U.S.C. 10141, clearly states that the requirements and criteria set forth in Part 60 relate to the Commission's responsibility under the Atomic Energy Act and the Energy Reorganization Act and do not require a NEPA EIS. The Part 51 changes, on the other hand, will

Final Procedural, as Modified

in alphabetical sequence, ANA All Nippon Airways.

Dated: June 19, 1986.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service

[FR Doc. 86-17045 Filed 7-29-86; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 60

Disposal of High-Level Radioactive Wastes in Geologic Repositories: Amendments to Licensing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations applicable to the disposal of high-level radioactive wastes in geologic repositories. These amendments deal with procedural aspects of site characterization and the participation of States and Indian Tribes. Among other things, the rules set forth requirements applicable to the Department of Energy for submitting site characterization plans. For the most part, the amendments to licensing procedures are changes made to reflect the provisions of the Nuclear Waste Policy Act of 1982

EFFECTIVE DATE: August 29, 1986.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427-4586.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 1981, the Nuclear Regulatory Commission (NRC) promulgated licensing procedures for the disposal of high-level radioactive waste (HLW) in geologic repositories (46 FR 13971). The enactment of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10101 et seq., brought about a need to revise some of the procedures in 10 CFR 60. The NWPA set forth in considerable detail the procedures to be followed during the process of siting and development of HLW geologic repositories, and the respective roles of NRC, the Department of Energy (DDE), and States and Indian Tribes. These amendments contain the changes to 10 CFR Part 60 that are needed to conform the licensing procedures in the rule to the provisions of the NWPA. In addition, the amendments contain some changes considered desirable in light of experience gained with the pre-licensing consultation process since the promulgation of the procedural part of 10 CFR Part 60.

On January 17, 1985 the Commission published proposed procedural amendments to 10 CFR Part 60 for public comment (50 FR 2579). The proposed amendments contained revisions to (1) the content of the site characterization plan (SCP), (2) NRC review of the SCP, and the issuance by NRC of a site characterization analysis (SCA), (3) means and timing of State and Indian Tribe consultation with NRC and participation in NRC reviews, and (4) notice and publication by NRC with respect to site characterization documents. The Commission received a number of comments on the proposed amendments, all of which have been carefully considered. The principal issues raised by these comments are discussed below.

Comments

A total of 15 organizations commented on the proposed rule, addressing a variety of concerns. Five of these issues call for extended response in this statement. These issues are: whether NRC should issue a draft site characterization analysis; the deletion of site selection information from the contents of the SCP; whether DOE should be required to receive and consider comments on the SCP before starting to sink a shaft; whether all amendments of 10 CFR Part 60 and Part 51 to conform with the Nuclear Waste Policy Act, especially those related to NEPA requirements and the present amendments, should be promulgated at the same time; and whether host States should automatically be afforded party status in licensing proceedings. Summaries of the comments received on these issues are presented below. Copies of all the comments, and the Commission's analysis of them, are available in the Commission's Public Document Room.

a. Draft Site Characterization Analysis

There were several comments about the deletion of the draft site characterization analysis (SCA). Under the proposed rule, the NRC would have issued an SCA, a final set of comments on DOE's SCP, and would have invited public comment on its SCA for consideration in the ongoing staff review and commentary on the DOE program but would not have issued both a draft and a final SCA. Some commenters agreed with elimination of the draft SCA. However, most commenters requested that NRC continue to issue its analysis in both a draft and final form. Commenting States and Tribes believe that they have substantial expertise which NRC should consider in preparing its analysis on the DOE SCP. Some States wanted to see NRC's draft SCA to have the benefit of NRC's expertise while preparing their own comments. Some commenters emphasized a belief that any schedule delays resulting from issuing a draft SCA would not be important. Some commenters believed that the opportunities and procedures for public and State involvement in the repository siting and development process under the NWPA are not substantially different from those contemplated when the previous regulations were promulgated. For this they concluded that there is no reason for NRC to change its procedures by eliminating the draft analysis on DOE's SCP's.

The Commission understands the concerns of the States, Tribes and public that their views be heard and considered. The Commission intends to be fully aware of State, Tribe and public views before, during, and after the site characterization plan review. The States and affected Indian Tribes will be routinely informed of the information made available to NRC and NRC's comments thereon. They are able to participate at NRC/DOE technical meetings. As is now being done, the NRC staff will continue to have discussions with State and affected Indian Tribe representatives and will respond to their written submissions. The NRC will also follow closely the NWPA mandated opportunities for State, Tribe and public interaction with DOE to be aware of the concerns which are expressed by the States and Tribes in these forums.

The need for opportunities for State, Indian Tribe, and public involvement is addressed extensively by the NWPA. The procedures established by the statute provide means for informing NRC of issues of concern. Given these specific procedures, and taking into account the scheduling provisions of the NWPA, the publication of a draft SCA is no longer warranted. It is not required by law. It is important to note, however, that there will still be an opportunity to comment on NRC's SCA as the rule as amended requires the solicitation of such comments. NRC will make further comments to DOE if the State and public comments on NRC's SCA provide substantial new grounds for making recommendations or stating objections to DOE's site characterization program. (It should be noted, however, that NRC

MARK WHITE
GOVERNOR

OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

May 6, 1985

Commissioner Nunzio J. Palladino
Chairman, United States Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Dear Chairman Palladino:

On March 22, 1985, the State of Texas submitted comments on Proposed amendments to 10 CFR Part 60, "Disposal of High-Level Radioactive Waste in Geologic Repositories: Amendments to Licensing Procedures."

We have commented informally, in the past, on the primary areas of interest in these amendments which involve both the role of the NRC during site screening and site characterization activities, and the matter of state, tribal and public interaction in NRC activities with respect to geologic repositories. We have taken a considerable interest in these amendments, which I believe is reflected in our continuing comments of both a preliminary and a formal nature, yet judging by the substance and content of the Proposed amendments, I believe there is an incomplete understanding of our concerns and those of other interested parties.

In order to attempt to further clarify the issues relevant to the amendment of 10 CFR Part 60 addressed in the proposal, I am requesting that a meeting be scheduled to provide an opportunity for discussion of the matter between the Commission and the affected parties. I am not proposing a Public Hearing, but rather am requesting a meeting of a type similar to that held by the Commission on the DOE siting guidelines (10 CFR Part 960) in which there was an opportunity to discuss the issues of concern directly with the Commission in a constructive and informative manner.

I look forward to your consideration of this request, which is made in light of the productive relationship that has developed between affected states and tribes and the Commission. If you have any questions regarding this request, please do not hesitate to contact me.

Sincerely,

Steve Frishman

Steve Frishman, Director
Nuclear Waste Programs Office

cc: Commissioner James K. Asselstine
Commissioner Frederick M. Bernthal
Commissioner Thomas M. Roberts
Commissioner Lando W. Zech, Jr.
Secretary Samuel J. Chilk
Mr. Robert Browning

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