



Department of Energy

Washington, DC 20585

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Mr. John C. Hoyle
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Re: Comments on Proposed Revision to 10 CFR Part 2, Subpart J

DOCKET NUMBER
PROPOSED RULE PR 2

(62FR60789)

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Dear Mr. Hoyle:

The Department of Energy is pleased to submit comments on the Nuclear Regulatory Commission's Notice of Proposed Rulemaking for amendments to 10 CFR Part 2, Subpart J, Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository.

The intent of Subpart J is to reduce the time normally spent on the discovery process by using an electronic information management system to make relevant information available to all parties during the repository prelicensing phase, as well as during any adjudicatory process. The existing rule envisions use of a stand-alone computer, the Licensing Support System (LSS). The proposed amendments address two main assumptions: (1) emerging information management technologies can accomplish this function more effectively and with less cost than the LSS, and (2) there exists a substantial backlog of irrelevant materials that may not have been identified or properly maintained, yet must be included in the LSS under the current rule. The proposed amendments would replace the LSS with an integrated electronic information system using web-based technology and modify the scope of documentary material to be included in the LSS.

The Department is highly supportive of the proposed use of new information management technologies. Our principal comment on the revision is that the scope of documentary material has not been sufficiently narrowed to exclude irrelevant material. Our detailed comments are provided in the attachment to this letter.

Should you have questions, please contact Nancy Slater at 202-586-9322 or Claudia Newbury at 702-794-1361.

Sincerely,

Ronald A. Miller
for Lake H. Barrett, Acting Director
Office of Civilian Radioactive
Waste Management

Attachment

**Office of Civilian Radioactive Waste Management
U.S. Department of Energy
Comments on the Proposed Rule at 10 CFR Part 2, Subpart J
Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-
Level Radioactive Waste at a Geologic Repository**

SUBSTANTIVE COMMENTS

1. § 2.1001 Definitions

The proposed definition of “documentary material” is unnecessarily broad. One of the main reasons cited by NRC for proposing the rule change is that there exists a substantial backlog of irrelevant documents that may not have been identified or properly maintained, yet which must be included in the LSS under the current rule. NRC noted that this backlog would not allow timely certification of the LSS. DOE proposes the following modifications to the definition to more completely address this concern:

Delete the proposed third class of documentary material, “all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related “circulated drafts,” relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party.”

The DOE believes that the first two classes of documentary material are defined broadly enough to capture all relevant materials. DOE is concerned that the NRC-proposed definition would encompass reports and studies irrelevant to the specific license application, for example, reports and studies made for other sites and for predecessor agencies.

2. § 2.1004 Amendments and Additions, and § 2.1010 Pre-License Application Presiding Officer

This section allows two working days to make available for inspection and copying any document that has not been provided to other parties in electronic form. The same type of two-day limit is also imposed in § 2.1010(c) regarding material determined to be relevant and not privileged or exempt. Noting that reasonable and expeditious efforts to reproduce and make documents, particularly large documents, available could easily consume two days, the DOE suggests that these time limits (in § 2.1004 and § 2.1010(c)) be changed from two working days to ten working days. Such a change in the rule would also relieve

the Presiding Officer of the burden of evaluating and granting minor extensions of time, where these are likely to result mainly from the time necessary for clerical and administrative processing.

3. **§ 2.1007(a)(3) Access**

The proposed rule retains requirements for electronic access systems in Las Vegas, Reno, Carson City, and Nye and Lincoln Counties (§ 2.1007(a)(3)). However, the proposal does not specify which locations are the responsibility of the NRC or DOE. The DOE requests that the rule be clarified to assign responsibility for the systems in each of the locations specified.

4. **§ 2.1007(c) Access**

Subsection (c) appears to require both the NRC and the DOE to treat docketed documents as agency documents under FOIA. However, it is unclear which agency must treat which documents as its own in response to requests for information. The final phrase of the first sentence “if these documents remain under the custody and control of the agency or organization that identified the documents” is confusing. The DOE proposes clarifying the responsibility under this provision by specifying that all documents entered into the docket pursuant to § 2.702, other than those submitted by another Federal agency, are NRC documents for the purposes of FOIA.

5. **§ 2.1009 Procedures**

The proposed rule replaces the six month intervals for certifying that the procedural requirements have been met with an unspecified interval “upon order of a duly appointed presiding officer.” The DOE believes that regular and prescribed certification will help ensure the success of the electronic docket system and suggests that a twelve-month period would be appropriate.

6. **§ 2.1010 Pre-License Application Presiding Officer**

Subsection (a)(1) should be clarified as to who may serve as the “Pre-License Application Presiding Officer.” The first sentence appears to consider only the “named officer who has been delegated final authority on the matter” as the “(Pre-License Application Presiding Officer).” As written, the other references to the Commission members and the atomic safety and licensing board are not directly connected to the referenced Officer. If the Officer is to be designated from among the Commission, the atomic safety and licensing board, or a named officer, the sentence should be revised. The DOE proposes that the introductory phrase be revised as:

“The Commission may designate one or more members of the Commission, or of an atomic safety and licensing board, or a named officer who has been delegated

final authority on the matter, to serve as the Pre-License Application Presiding Officer to rule on disputes over the electronic availability of documents during the pre-license application phase ...”.

7. **§ 2.1011(c) Management of Electronic Information**

The DOE supports the proposed idea of modifying the role of the Advisory Review Panel (ARP) that advises the NRC and the Secretary of the Commission. Regarding the alternative, discussed in 62 FR 60791, of replacing this panel with a more informal users group, the DOE believes that it is premature to replace the panel with such a users group. A more formal technical group still appears appropriate for providing the advice specified in § 2.1011(d), because the formality will ensure that each ARP member's concerns about the structure of the electronic docket will be addressed in a documented manner.

8. **§ 2.1012(d) Compliance**

The proposed rule states that the Pre-License Application Presiding Officer may suspend or terminate access to the pre-license application electronic docket for a party who is not in compliance. While control of access could be appropriate, such control contradicts the recognition that the information is publicly available, per § 2.1007(a)(1), and could be made available universally through the Internet. The notion of controlled access suggests that the NRC does not intend to require an Internet-based system with the level of public access generally associated with the Internet. The DOE suggests that the NRC clarify the purpose and method of access control.

9. **§ 2.1017 Computation of Time**

Because access to the electronic docket may be unavailable for many reasons, such as the computer being used by a party is unavailable due to routine maintenance or a power failure, etc., it may be useful to define what is meant by unavailable or to require prompt notice if the unavailability of the system is due to a local cause.

10. **§ 2.1019 Depositions**

Section 2.1019(i) requires deponents to submit an electronic index of all documents in the deponent's possession relevant to the subject matter of the deposition. This section further states that “documents that are not identical to documents already made available electronically, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents” and that a paper copy of all documents not already made available electronically shall be brought to the oral deposition or accompany a written deposition.

The DOE recognizes that the documents potentially subject to this requirement could be

large. It may better serve the needs of those using the system if this requirement were clarified to recognize that modifications and notations could be made on only small parts of large documents, and therefore, only the affected parts of the documents would be submitted as separate documents under § 2.1019(i)(1).

EDITORIAL COMMENTS

11. § 2.1005 Exclusions

The word "Preferences" in § 2.1005(f) should be changed to "References."

12. § 2.1010 Pre-License Application Presiding Officer

The word "prvliged" in § 2.1010(b)(3) should be change to "privileged."