



DOCKET NUMBER
PROPOSED RULE

PR

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(54FR39387)

Department of Energy
Washington, DC 20585

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Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, D.C. 20555

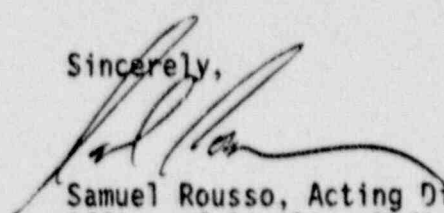
Dear Mr. Secretary:

On September 26, 1989, the Nuclear Regulatory Commission (NRC) published in the Federal Register a notice of proposed rulemaking to amend its Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository (10 CFR Part 2, Subpart J). The proposed rule makes changes to 10 CFR Part 2, Subpart J which would expedite and streamline the licensing process and would facilitate the NRC's ability to comply with the 3-year review of the application for construction authorization as required by Section 114(d) of the Nuclear Waste Policy Act, as amended.

The Department of Energy (DOE) has reviewed the proposed rule and supports the NRC's efforts in providing changes to Subpart J. The DOE also supports the NRC's efforts to resolve issues related to the management of the geologic repository licensing hearing. The DOE appreciates that the changes are consistent with the DOE proposal outlined in my February 16, 1989, letter to the NRC. The DOE has three comments related to submission of material to the licensing support system, the compulsory hearing schedule, and Issue (2) under Notice of Hearing. Our specific comments are included in the enclosure.

We appreciate the opportunity to comment on the proposed rule. If you have any questions, please feel free to contact Ralph Stein (586-6046) of my staff.

Sincerely,


Samuel Rousso, Acting Director
Office of Civilian Radioactive
Waste Management

Enclosure:
Department of Energy Comments on
10 CFR Part 2, Subpart J, (54 FR 39387)

cc:
R. Bernero, NRC
R. Loux, State of Nevada
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ENCLOSURE

DEPARTMENT OF ENERGY
COMMENTS ON 10 CFR PART 2, SUBPART J
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Section 2.1003-Submission of Material to the Licensing Support System (LSS)

Under the present Section 2.1003(h)(2)(i) the "LSS Administrator shall evaluate the extent of the DOE's compliance with the provisions of this section" and under Section 2.1003(h)(2)(ii) the "LSS Administrator shall issue a written report of his or her evaluation of DOE compliance under paragraph (h)(2)(i)." [Emphasis supplied.] Potential parties, under Section 2.1003(h)(2)(iii), may submit comments on the report to the LSS Administrator.

As a participant in the negotiated rulemaking which resulted in Section 2.1003, DOE does not agree with the NRC interpretation, as explained in the Supplementary Information to the proposed rule, that the evaluation and written report are separate documents. Such an interpretation would require the LSS Administrator to prepare two documents, an evaluation and a written report, every 6 months. It is the DOE understanding of paragraphs (h)(2)(i) and (h)(2)(ii) that the first requires an evaluation to be performed while the second specifies the method of recording that evaluation, i.e., a single written report.

The DOE agrees with the requirement in the proposed change that comments or objections not filed within 30 days of the written report should be waived. This will allow the LSS Administrator to respond as necessary, while remaining on a reasonable timetable for preparation of the next evaluation and its written report.

Section 2.1026-Compulsory Hearing Schedule

The NRC, in proposed Section 2.1026(b)(1), has provided that:

"the Hearing Licensing Board may approve extensions of no more than 15 days beyond any required time set forth in this subpart for a filing by a party to the proceeding. Except in the case of exceptional and unforeseen circumstances, requests for extensions of more than 15 days must be filed no later than 5 days in advance of the required time set forth in this subpart for a filing by a party to the proceeding."
[Emphasis supplied.]

It is unclear precisely what is meant by "exceptional and unforeseen circumstances . . .," and what deadlines, if any, a party requesting such an extension would have to meet. The DOE suggests that the NRC

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provide a few examples of "exceptional and unforeseen circumstances" for the guidance of potential parties and the Hearing Licensing Board.

Comment on Issue 2, Under Notice of Hearing (54 FR 39390)

The DOE is in agreement with the NRC effort to provide a Hearing Licensing Board with the expertise appropriate to the licensing of a geologic repository. We have two comments with respect to the proposed backgrounds for the technical members of the panel. First, the DOE believes that it is important that at least one of the technical members have some previous experience in the NRC licensing process. Second, the DOE is concerned that requiring both technical members to have a background in performance assessment may unnecessarily limit the NRC pool of available candidates. A requirement for a background in performance assessment for one technical member, with a preference for such background in the second technical member would provide NRC with more flexibility.