Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AH31

Licensing Proceeding for the Receipt of High-Level Radioactive Waste at a Geologic Repository: Licensing Support Network, Submissions to the Electronic Docket

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its Rules of Practice applicable to the use of the Licensing Support Network (LSN) and the electronic hearing docket in the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository. The proposed amendments would establish the basic requirements and standards for the submission of adjudicatory materials to the electronic hearing docket by parties to the high-level radioactive waste licensing proceeding. The proposed amendments would also address the issue of reducing the unnecessary loading of duplicate documents on individual participant Licensing Support Network document collection servers; the continuing obligation of LSN participants to update their documentary material after the initial certification; the Secretary of the Commission's determination that the DOE license application is electronically accessible; and the provisions on material that may be excluded from the LSN.

DATES: Submit comments by January 12, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150-AH31 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–1642, e-mail *FXC@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's regulations in 10 CFR part 2, subpart J, provide for, among other things, the use of an electronic information management system to provide documents related to the high-level radioactive waste (HLW) licensing proceeding. Originally promulgated on April 14, 1989 (54 FR 14944), the information management system required by Subpart J is to have the following functions:

(1) The Licensing Support Network (LSN) provides full text search and retrieval access to the relevant documents of all parties and potential parties to the HLW licensing proceeding in the time period before the U.S. Department of Energy (DOE) license application for the repository is submitted;

(2) The NRC Electronic Information Exchange (EIE) provides for electronic submission of filings by the parties, as well as the orders and decisions of the Atomic Safety and Licensing Board Panel (ASLBP), during the proceeding; and

(3) The Electronic Hearing Docket (EHD) provides for the development and access to an electronic version of the HLW licensing proceeding docket.

The creation of the LSN (originally called the ''Licensing Support System'') was stimulated by the requirements of Section 114(d)(2) of the Nuclear Waste Policy Act of 1982 (NWPA). This provision sets as a goal Commission issuance of a final decision approving or disapproving issuance of the construction authorization for a geologic repository for HLW within three years of the docketing of the DOE license application. The Commission anticipated that the HLW proceeding would involve substantial numbers and volumes of documents created by well-informed parties on numerous and complex issues. The Commission believed that the LSN could facilitate the timely review of DOE's license application by providing for electronic access to relevant documents via the LSN before the license application is submitted, rather than the traditional, and potentially time-consuming, discovery process associated with the physical production of documents after

a license application is submitted. In addition, the Commission believed that early access to these documents in an electronically searchable form would allow for a thorough and comprehensive technical review of the license application by all parties and potential parties to the HLW licensing proceeding, resulting in better focused contentions in the proceeding. The LSN would also facilitate agency responses to Freedom of Information Act (FOIA) requests by providing the public with electronic access to relevant documents.

The current requirements in 10 CFR 2.1003(a) require the DOE to make its documentary material available to other potential parties and the public in electronic form via the LSN no later than six months in advance of DOE's submission of its license application to the NRC. The NRC must make its documentary material available in electronic form via the LSN no later than thirty days after the DOE certification of compliance. All other participants must make their documents available in electronic form no later than ninety days after the DOE certification of compliance. Originally, the LSN was conceived of as a large, centralized information management system administered by what was then called the Licensing Support System Administrator (now the LSN Administrator). To take advantage of the advances in technology that occurred since the promulgation of the original rule, the Commission revised the rule to use the Internet to link geographically dispersed sites rather than relying on a complex and expensive centralized system (63 FR 71729; December 30, 1998).

The proposed amendments would address a number of aspects of the current rules:

- The requirements and standards for a party's submissions to the electronic docket for the HLW licensing proceeding;
- Those provisions that could result in the loading of duplicate documents on individual participant LSN document collection servers;
- The provisions related to the Secretary of the Commission's determination that the DOE license application is electronically accessible; .
- Those provisions related to the continuing obligation of LSN participants to update their documentary material; and
- Those provisions on material that may be excluded from the LSN.

The Commission has consulted the LSN Advisory Review Panel (LSNARP) on the document format standards and the document duplication issues that are the subject of these proposed revisions. The Commission, which appreciates the advice of the LSNARP on these items, anticipates additional interaction with the LSNARP on matters raised in the proposed rule, and will further evaluate any LSNARP advice in conjunction with its evaluation of the public comments received on these proposed revisions.

II. Submissions to the Electronic Docket for the Hearing

As noted, one of the objectives of the regulations in 10 CFR Part 2, Subpart J is to provide for electronic submission of filings by the parties, as well as the orders and decisions of the ASLBP, during the proceeding. The objective of this function is to reduce the time that it takes to serve filings by substituting electronic transmission for the physical mailing of filings that is typically used in NRC licensing proceedings. Shortening the amount of time for certain activities during the hearing process will support the NRC's efforts to meet the schedule in the NWPA. Section 2.1013(c)(1) requires that all filings in the HLW licensing proceeding be transmitted electronically (emphasis added) by the submitter to the Presiding Officer, the parties, and the Secretary of the Commission. The Commission believes that the majority of these filings will consist of simple documents that can be readily transmitted by EIE. However, after further considering the nature of some of the documents that may be submitted by the parties during the proceeding, the Commission believes that it is necessary to specify requirements for submitting large and/or complex documents.

Large documents consist of electronic files that, because of their size, create challenges for both the NRC staff, potential parties and the public when transmitting, viewing, or downloading the document (*e.g.*, significant delays in transmission, uploading, or downloading times). The Commission anticipates that the potential license application and some filings in the HLW adjudicatory proceeding will be of a size that will create transmission, viewing, or downloading challenges. In electronic format, some of these files could be up to several hundreds of megabytes (MB) in size. Examples of potential large documents are:

- DOE Site Characterization Plan
- DOE License Application and supporting materials
- DOE Environmental Impact Statement
- Adjudicatory documents (*e.g.*, motions, responses, transcripts, exhibits, and orders)

Additionally, any or all of these types of documents could contain embedded photographs, charts, tables, and other graphics.

Complex documents consist (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature. For example, these types of specialized documents may include:

- Executable files, which can be opened (run) to execute a programmed series of instructions on a computer or network;
- Runtime executable software, which generally is operational upon demand without being installed on a computer or network;
- Viewer or printer executable software that causes images to be displayed on the computer monitor or pages to print on an attached printer;
- Files from a dynamic link library (.dll), which are a collection of small, bundled executable programs that each provide one or more distinctive functions used by application programs and operating systems and are available when needed by applications or operating systems;
- Large data sets associated with an executable; and
- Actual software code for analytical programs that a party may intend to introduce into the proceeding.

As part of complex document submittals, the NRC anticipates receiving files that—

(1) Due to their file size, may preclude easy transmission, retrieval, and use; or

(2) May require specialized software and/or hardware for faithful display and subsequent use; and

(3) May not be suitable for inclusion in a ''generic'' file format such as the Adobe'' Acrobat Portable Document Format (PDF).

Examples of files that could be part of a complex document are:

- Maps.
- Databases.
- Simulations.
- Audio files.
- Video files.
- Executable programs.

Some of the problems posed by the electronic transmission of these large or complex documents are:

Electronic Submission Process

When submitted via the Internet, very large documents or files can cause ''time-out'' problems for computers at either end of the transfer, resulting in a failed or canceled transfer. Time-outs occur when a computer program terminates prematurely, sometimes because the computer notices a lapse in interaction with the user during the long

amount of time needed to transfer a large document. Transmission times are dependent on the speed of the sender's communication device and the technology used by the Internet service provider. Large documents or files require lengthy transmission times during which the potential for error conditions or other service interruptions increases in direct proportion to the time the communication link must be maintained. Service interruptions can result from human error, excessive network traffic, or network component failure that prevent users from communicating with other users or networks over a local network connection or the Internet. The time-out problems could affect each party who receives the documents as part of the service of a filing. The actual transfer times for very large documents or files may approach 24 hours using standard Internet File Transfer Protocol (FTP) routines. In terms of ensuring timeliness, this may not be a significant improvement over the use of an overnight courier to send the files on optical storage media (*e.g.*, CD–ROM).

Access to Large, Complex Documents in the Electronic Hearing Docket (EHD)

Keeping a large document together in one very large file may allow users to easily search for, retrieve, and analyze the document in its entirety, but may result in service interruption problems similar to those described above. This is particularly true if a user wants to download the image file of one of these large documents. Retrieval time will be unacceptably slow, or will result in a time-out problem with the user's Internet connection. Users of the EHD may encounter comparable download delays because of the file size of large or complex documents and, depending on the nature of the file, the file may not be executable on a user's desktop personal computer because of configuration, memory, display, or other technical problems.

Use of Large, Complex Documents in a Hearing Room

Large documents may be pre-filed in their entirety as potential exhibits in the hearing docket; however, in the hearing room, it is possible that only portions of such documents, *i.e.*, chapters, pages, or paragraphs will be offered. In a dynamic and fast-paced hearing room environment, it would not be desirable to delay the proceeding to wait for a large file to load; navigate to the desired chapters, pages, or paragraphs; and then extract the appropriate selection for use in the proceeding. Complex documents may also require specialized hardware and/or software to execute software program files and access their associated data.

Official Record and Federal Records Management Considerations

For both large and complex documents, the NRC must consider the need to generate an official record of the proceeding for use in potential appellate environments, see 10 CFR 2.1013(a), and for generating an Official Agency Record (OAR) version of the docketed materials for retirement to the National Archives and Records Administration (NARA). Each of these situations requires the ability to reassemble the record version of the documentary material (excluding software executables), independent of the media or software initially used to create it.

In response to these potential problems, the Commission is proposing a revised framework for the submission of filings during the HLW licensing proceeding. This revised framework is based on segmenting large documents using manageable file size units to reduce the potential for interruption or delay in transmission, uploading, or downloading. For example, large documents could be segmented into pieces, which correspond to the organization (chapters or sections) of the document, in order to address the transfer and retrieval performance problems discussed above. The author of the document would be in the best position to break up document files into usable segments without adversely impacting the organization or content of the document.

The electronic submission of filings in the HLW licensing proceeding must be made via the Internet using the NRC EIE, when practicable. The EIE is an electronic transfer mechanism being established by the NRC for electronic transmission of documents to the agency via the Internet. EIE provides for the transmission of documents in a verifiable and certifiable mode that includes digital signatures.

The proposed amendments would revise § 2.1001 to establish three categories of electronic filings for purposes of the HLW licensing proceeding and would revise § 2.1013(c)(1) to specify the submission requirements for these three categories of electronic filings.

''*Simple documents*'' are textual or graphic oriented material that are less than 50 megabytes (MB) in size. These documents are transmitted electronically via EIE as contemplated by the current 10 CFR 2.1011. Test results have demonstrated that 50 MB is a reasonable size for downloading files across wide area networks or from the Internet via phone lines.

''*Large documents*'' are those that have textual or graphic oriented material larger than 50 MB in size. Under proposed § 2.1013(c)(1)(ii), these documents must be submitted via the EIE in multiple transmissions of 50 MB each. The large document submission may also be supplemented with a courtesy copy on optical storage media to provide NRC staff, parties, and interested governmental participants in the HLW licensing proceeding with a useful reference copy of the document. For purposes of the NRC staff review of the DOE license application, as opposed to an electronic submission to the adjudicatory docket, the requirements for DOE's submission of the license application are already specified 10 CFR 63.22 of the Commission's regulations. Section 63.22(a) specifies that the application, any amendments to the application, and an accompanying environmental impact statement and any supplements, must be signed by the Secretary of Energy or the Secretary's representative and must be filed with the Director in triplicate on paper and optical storage media. In addition, 10 CFR 63.22(b) requires that 30 additional copies of the license application be submitted on paper and optical storage media.

''Complex documents'' are any combination of the following:

- Textual or graphic-oriented electronic files
- Electronic files that cannot be segmented into 50 MB files
- Other electronic objects, such as computer programs, simulations, video, audio, data files, and files with special printing requirements.

Under proposed § 2.1013(c)(1)(iii), those portions of complex documents that can be electronically submitted through the EIE, again in 50 MB or less segments, will be transmitted electronically. Those portions that are not amenable to electronic transmission will be delivered on optical storage media. The optical storage media must include the complete document, *i.e.*, include the portions of the document that have been delivered via the EIE.

In addition to these proposed revisions, § 2.1013 (c)(1) would also be amended to require the following:

- Electronic submissions must have 300 dots per inch (dpi) as the minimum resolution for bi-tonal, color, and grayscale resolution.
- Electronic submissions must be in the appropriate PDF output format. These formats and their use are:

• PDF—Formatted Text and Graphics—use for textual documents converted from native applications
• PDF—Searchable Image (Exact)—use for textual documents converted from scanned documents +
• PDF—Image Only—use for graphic-, image-, and forms-oriented documents

Tagged Image File Format (TIFF) images and the results of spreadsheet applications will need to be converted to PDF, except in those rare instances where PDF conversion is not practicable. Spreadsheets may be submitted using Microsoft® Excel, Corel® Quattro Pro, or Lotus® 123.

• Electronic submissions to the hearing docket cannot contain any hyperlinks to other documents or Web sites. Electronic submissions to the hearing docket, however, may contain hyperlinks within a single PDF file, if those links are created using PDF authoring software. Hyperlinks are electronic links that allow a user to automatically access a document or web site by clicking on the hyperlink. The existing NRC Document Management System used as the basis for the electronic hearing docket does not accept hyperlinks to other documents or websites. Even if the NRC Document Management System were changed in the future to include a hyperlink capability, questions about the integrity of the Commission's electronic hearing docket might arise if the hyperlink in a document did not function. This could happen because either a ''hyperlinked'' website is not operating or a ''hyperlinked'' document is not included in the electronic hearing docket. Furthermore, it is uncertain whether NARA will accept as an official record documents containing hyperlinks to other documents or web sites.
• Electronic submissions must be free of any security restrictions imposed by the author (proposed § 2.1013(c)(1)(vii)).

Additional information on the submission of these filings will be provided in a guidance document from the NRC. *See* ''Guidance for Submission of Electronic Docket Materials Under 10 CFR Part 2, Subpart J'', U.S. Nuclear Regulatory Commission, October, 2003. The Guidance document is available on the NRC Web site (*http://www.nrc.gov*). The NRC expects parties, interested governmental participants, and potential parties to use the detailed instructions in the Guidance document to ensure that their electronic filings are effectively submitted. Areas covered by the guidance document address the need for and format of the transmittal letter for electronic filings, file naming conventions, copyrighted information, and instructions on sensitive or classified information.

The proposed revisions would also clarify the responsibility of the Secretary of the Commission, under §§ 2.1012(a) and 2.1013 (a)(2), to determine if the DOE license application for a HLW repository can be properly accessed under the Commission's ''electronic docket rules''. Under § 2.1012(a), the DOE license application cannot be docketed unless the Secretary of the Commission finds that it can be effectively accessed. The proposed revisions would not change this requirement. However, the Commission is clarifying that this compliance requirement refers to the accessibility of the DOE license application as part of the NRC staff licensing docket rather than the Commission's hearing docket (emphasis added). This is consistent with traditional NRC practice where a license application is part of the NRC staff licensing docket but is not added to the Commission's hearing docket unless a party offers all or part of the license application as evidence. Sections 2.1012(a) and 2.1013(a)(2) would be revised to specify that the Secretary's determination on electronic accessibility would be based on whether the DOE license application could be effectively accessed through the Commission's Agencywide Document Access and Management System (ADAMS) rather than the electronic hearing docket.

III. Documentary Material

Section 2.1003 of the current LSN rule requires a party, a potential party, or an interested governmental participant (hereinafter ''participant'') to make its documentary material available in electronic form. The definition of ''documentary material'' includes material prepared by an individual participant, for example, all reports or studies prepared by, or on behalf of, a participant. It also includes other material in the possession of the participant on which the participant intends to rely and/or cite in support of its position in the HLW licensing proceeding or that doesn't support its position. This provision can be read to obligate a party who possesses a document prepared by another participant to make that document available on its LSN document collection server even though it is already available on the LSN document collection server of the party who had prepared the document. For example, under this interpretation a document prepared by DOE would not only need to be available through the centralized LSN Web site from the DOE LSN document collection server, but also from the LSN document collection server of other participants. Without compromising the objective of ensuring that all documentary material is available on the LSN, the Commission believes that it would be beneficial to eliminate or at least significantly reduce the loading of duplicate documents. Reducing duplication will not only alleviate burdens on the participants, but will also make search and retrieval of the LSN collection more efficient. Therefore, the proposed amendment to § 2.1003(a)(1) would allow a LSN participant to avoid loading a document created by another LSN participant if that document has already been made available by the LSN participant who created the document or on whose behalf the document was created.

If, in the process of eliminating duplicate documents, an LSN participant identifies a document which the creator of that document has not included on its LSN document collection server, as a practical matter, the participant who identified the document should include it on its LSN document collection server, as well as notifying the creator of the document that it is taking that action. Moreover, in such circumstances, it is not apparent what purpose would be served by raising the issue before the Pre-license application Presiding Officer (PAPO) unless the documentary material has some readily apparent significance as a Class 2 document (as delineated in the discussion below) or a significant number of ''missing'' documents were identified with regard to a particular LSN participant, so as to raise the issue of a concerted, deliberate effort not to comply with the regulations.

The Commission is also proposing to amend § 2.1003 by adding a new paragraph (e) to this section. Proposed § 2.1003(e) would require LSN participants to supplement the documentary material provided under § 2.1003(a) in its initial certification with documentary material produced after that event. While much of an LSN participant's documentary material will be made available early, it is reasonable to expect that additional material will be created after the initial compliance period specified in § 2.1003(a). In addition, the ongoing performance confirmation program required of DOE by § 63.131 of the Commission's regulations will generate additional documentary material after the license application is docketed. In addition, during the proceeding, the Atomic Safety and Licensing Board can always

direct that additional discovery must take place.

Finally, the Commission is providing further information and a clarification on the responsibilities of LSN participants in regard to the three classes of documentary material in § 2.1001. These three classes are:

1. Any information on which a party, potential party, or interested governmental participant intends to rely and/or cite in support of its position in the HLW proceeding;

2. Any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information noted in item 1 or that party's position; and

3. All reports and studies prepared by or on behalf of a potential party, interested governmental participant, or party, including all related ''circulated drafts'' relevant to the license application and the issues set forth in the Topical Guidelines, regardless of whether they will be relied upon or cited by a party.

The first two classes of documentary material are tied to a ''reliance'' criterion. Reliance is fundamentally related to a position that a party in the HLW licensing proceeding will take in regard to compliance with the Commission regulations on the issuance of a construction authorization for the repository. These compliance issues take the form of ''contentions'' of law or fact that a party has successfully had admitted for litigation in the HLW proceeding under § 2.1014(a)(2) of the regulations. The third class of material, ''reports and studies prepared for or on behalf of the potential party, * * *'' has meaning independent of any contentions that might be offered. The material in this class must be available on the LSN regardless of whether it has any relation to a contention offered at the hearing. It is also a likely source of the material that a party would use to develop its contentions. ''Reports'' and ''studies'' will also include the basic documents relevant to licensing such as the DOE environmental impact statement, the NRC Yucca Mountain Review Plan, as well as other reports or studies prepared by a LSN participant or its contractor.

To fall within the definition of ''documentary material'', reports or studies must have a nexus to both the license application (emphasis added) and the Topical Guidelines contained in NRC Regulatory Guide 3.69. This dual requirement is designed to ensure that LSN participants do not have to identify, and include as documentary material, reports or studies that have no bearing on the DOE license application for a geologic repository at the Yucca Mountain site, such as reports or studies on other potential repository sites or on issues outside of the NRC licensing criteria. In addition, § 63.21 of the Commission's regulations requires that the DOE Environmental Impact Statement (EIS) must accompany the license application. Therefore, reports and studies relevant to issues addressed by the DOE EIS must also be made available as Class 3 documentary material. This is also consistent with the coverage of the Topical Guidelines.

To assist participants in identifying documentary material that may be relevant to the future license application in the time period before it is submitted, the Commission is recommending that LSN participants use the NRC Yucca Mountain Review Plan (NUREG–1804, Rev. 2, July, 2003) as a guide. The Yucca Mountain Review Plan provides guidance to the NRC staff on evaluating the DOE license application. As such, it anticipates the form and substance of the DOE license application and can be used as a reliable guide for identifying documentary material.

The Commission also notes that the history of the LSN and its predecessor, the Licensing Support System, makes it apparent it was the Commission's expectation that the LSN, among other things, would provide potential participants with the opportunity to frame focused and meaningful contentions and to avoid the delay potentially associated with document discovery, by requiring parties and potential parties to the proceeding to make all their Subpart J-defined documentary material available through the LSN prior to the submission of the DOE application. These purposes still obtain. Nonetheless, the Commission is clarifying that, because the full scope of coverage of the reliance concept will only become apparent after proffered contentions are admitted by the Presiding Officer in the proceeding, an LSN participant would not be expected to identify specifically which of its documents fall within either Class 1 or Class 2 documentary material in the pre-license application phase.

In this regard, the Commission still expects all participants to make a good faith effort to include on their LSN document collection servers all of the Class 1 and Class 2 documentary material that reasonably can be identified by the date specified for initial compliance in § 2.1003(a) of the Commission's regulations. Thereafter, in conjunction with its license application submission, DOE would be required to supplement its Class 1 and Class 2 documents to the degree the application makes it apparent the scope of the DOE documentary material in those classes had changed, a process that might well be repeated by all parties following the admission of contentions. Finally, as part of the regular post-contention admission discovery process under § 2.1018, a party could be required to identify the specific documents that comprise its Class 1 and Class 2 documentary material. As a consequence, while it is not possible to say there are no special circumstances that would necessitate a ruling by the PAPO on the availability of a particular document in the pre-license application stage based on its Class 1 or Class 2 status, disputes over Class 1 and Class 2 documentary material generally would be of a type that would be more appropriately raised before the Presiding Officer designated in the Notice of Hearing during the fifteen months following the admission of contentions that are allotted to the NRC staff to complete the Safety Evaluation Report in its entirety.

IV. Exclusions

The Commission has reviewed its procedural rules for the HLW licensing proceeding, including the LSN requirements, to assess whether they appropriately reflect the evolution of the relevant technology, law, and policy since the rules were originally promulgated in 1987, being mindful of a recent report by the House Committee on Appropriations, issued July, 2003, expressing concern on the extent of documentation that DOE may be required to provide as part of the LSN. The Committee encouraged the Commission to review its regulatory requirements regarding the LSN to ensure that they do not require the duplication of information otherwise easily obtainable, focus on information that is truly relevant to the substantive decisions that will have to be made, and establish a time frame in accord with the traditional conduct of an adjudicatory proceeding.[1] Based on our review, the Commission has determined that the LSN rule could be further revised to address the Committee's concerns, while still maintaining the overall purpose and functionality of the LSN.

The Commission is proposing to revise § 2.1005 of the rule to specify an additional category of documents, ''congressional correspondence'', that may be excluded from the LSN. Section 2.1005 of the Commission's regulations establishes several categories of documents that do not have to be

[1] H.R. Rep. No. 108, 108th Cong. 1st Sess. (2003).

entered into the LSN, either under the documentary material requirements of § 2.1003, or under the derivative discovery provisions of § 2.1019. These include materials that are either widely available or do not have any significant relevance to the issues that might be litigated in the HLW licensing proceeding. The Commission is proposing to add ''correspondence between a party, potential party, or interested governmental participant and the Congress of the United States' to these exclusions. This reflects the Commission's current judgment that this type of material will not have a significant bearing on repository licensing issues. Much of this material either relates to budgetary issues or is merely a reiteration of an agency primary document. It would normally not be the source of material that a party would rely on for its case in the hearing or as a source of material that would be contrary to such reliance information. However, the material directed to Federal entities will still be available as part of the normal Federal recordkeeping requirements. If a particular item of Congressional correspondence does become relevant to a contention admitted in the HLW proceeding, it can be made available at that time. The Commission does not anticipate that any disputes over this clearly and narrowly defined exclusion would be brought before the PAPO.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This proposed rule would establish requirements and standards for the submission of filings to the electronic docket for the HLW licensing proceeding. Although the specific standards in the proposed rule are unique to the Commission's HLW proceeding, they are based on industry-wide standards such as Portable Document Format (PDF).

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Analysis

The following regulatory analysis identifies several alternatives to the Commission's proposal set forth in the proposed rule. Subpart J of 10 CFR part 2 establishes an electronic environment for the adjudicatory proceeding for consideration of a potential license application by the U.S. Department of Energy (DOE) to construct, receive, and emplace waste at the proposed HLW repository at Yucca Mountain, Nevada. The NRC expects to begin receiving and processing a significant volume of electronic documents associated with the adjudicatory proceeding in the near future. Some of these filings will consist of large or complex documents Examples of these large electronic files include maps, charts, video presentations, computer modeling or simulation programs with their associated databases, and narrative reports with extensive embedded graphic objects. Consistent with 10 CFR part 2, subpart J:

- The NRC has established the Licensing Support Network (LSN) so that all parties, potential parties, and participants in the proceeding will be able to make their documentary material electronically available to meet discovery requirements through individual participant LSN Web sites.
- The NRC will direct all participants in the adjudicatory proceeding to use the agency's EIE capabilities to submit their filings electronically to the NRC when practicable.
- After processing, documents submitted in the HLW proceeding would be available in the Electronic Hearing Docket (EHD), which is accessible via the Internet; electronic objects that cannot be made directly accessible via the EHD Web site, such as computer simulation models, will be described in the EHD and made available on optical storage media.

The assessment of existing and anticipated technology capabilities identified a number of potential issues that may make it difficult to meet the challenges of electronic submission of large documents as specified in 10 CFR part 2, subpart J. Those challenges are driven by the following fundamental issues:

- Technology limitations of current electronic document and records transmission and management systems.
- Maintaining document and object fidelity, integrity, and authenticity.
- Receiving source document formats in an acceptable resolution.
- Management of and access to non-textual information.
- Federal recordkeeping requirements.
- General usability of the electronic submittals.
- Potential limitations of information technology (hardware, software, or Internet service provider) used by the general public.

The Nature of the Documents

Documents may be large, complex, or a combination of both, as follows:

- Large documents consist of electronic files that, because of their size, create challenges for both the NRC and the public when transmitting, viewing, or downloading the document (*e.g.*, significant delays in transmission, uploading, or downloading times). The NRC anticipates that the potential license application and some filings in the HLW adjudicatory proceeding will be of a size that will create transmission, viewing, or downloading challenges. In electronic format, some of these files could contain several hundred megabytes.
- Complex documents consist (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature. For example, specialized exhibits may include computer software programs and their operating components, large data files, and actual software code for analytical programs that a party may intend to introduce into the proceeding.

Articulation of the Issues

Large and/or complex documents may pose challenges in any or all of the following general areas:

- *Electronic Submission Process.*

When submitted via the Internet, very large documents or files can cause ''time-out'' problems for computers at either end of the transfer, resulting in a failed or canceled transfer. Transmission times are dependent on the speed of the sender's communication device and the technology used by the Internet service provider. Very large document or files require lengthy transmission times during which the potential for error conditions or other service interruptions increases in direct proportion to the time the communication link must be maintained. The time-out problems could affect each party who receives the documents as part of the service of a filing. The actual transfer times for very large documents or files may approach 24 hours using standard Internet File Transfer Protocol (FTP) routines. In terms of ensuring timeliness, this may not be a significant improvement over the use of an overnight courier to send the files on optical storage media (*e.g.*, CD–ROM).

• *Access to Large, Complex Documents in the Electronic Hearing Docket (EHD).*

Keeping a large document together in one very large file may allow users to easily search for, retrieve, and analyze the document in its entirety, but may result in service interruption problems similar to those described above. This is particularly true if a user wants to download the image file of one of these large documents. Retrieval time will be unacceptably slow, or will result in a time-out problem with the user's Internet connection.

Users of the EHD may encounter comparable download delays because of the file size of large or complex documents and, depending on the nature of the file, the file may not be executable on a user's desktop personal computer because of configuration, memory, display, or other technical problems.

• *Use of Large, Complex Documents in a Hearing Room.*

Large documents may be pre-filed as potential exhibits in the docket; however, in a hearing room, it is possible that only portions of such documents, *i.e.*, specified chapters, pages, or paragraphs' will be offered. In a dynamic and fast-paced hearing room environment, it would not be desirable to delay the proceeding to wait for a large file to load; navigate to the desired chapters, pages, or paragraphs; and then extract the appropriate selection for use in the proceeding. Complex documents may also require specialized hardware and/or software to execute software program files and access their associated data.

• *Official Record and Federal Records Management Considerations.*

For both large and complex documents, the NRC must consider the need to generate an official record of the proceeding for use in potential appellate environments, see 10 CFR 2.1013(a), and for generating an Official Agency Record (OAR) version of the docketed materials for retirement to the National Archives and Records Administration (NARA). Each of these situations requires the ability to reassemble the record version of the documentary material (excluding software executables), independent of the media or software initially used to create it.

Coupled with the project objectives and technical requirements (discussed in the next section), these issues represent the framework for potential solutions. The NRC analysis distilled and assessed the objectives, technical requirements, and issues and developed four designs.

Technical Requirements

Given the anticipated size and complexity of individual documents, and the quantity of submittals, the need to transmit, manage, and retrieve electronic documents and objects challenges both the NRC's current processes and its information technology/information management (IT/IM) infrastructures, and the information technology (hardware, software, Internet service provider) in use by the general public. Examples of potential large documents are:

• The DOE Site Characterization Plan;

• The DOE License Application and supporting materials;

• The DOE Environmental Impact Statement;

• Adjudicatory documents (*e.g.*, motions, responses, transcripts, exhibits, and orders).

Any or all of these types of documents may contain embedded photographs, charts, tables, and other graphics that contribute to the understanding of the narrative.

The NRC also anticipates receiving files that could be part of complex document submittals that:

(1) Due to their file size, may preclude easy transmission, retrieval, and use; or

(2) May require specialized software and/or hardware for faithful display and subsequent use; and

(3) May not be suitable for inclusion in a ''generic'' file format such as PDF. The PDF standard, though it is proprietary to Adobe®, has been published and is available for use by software vendors. Users can access the content of a PDF format file through the use of the Adobe Reader® viewer software.

Examples of files that could be part of complex documents include maps, databases, simulations, audio files, video files, and executable programs.

The analysis of the challenges of handling large documents in the NRC and public IT environments considered the following functional areas:

• *Transmit* activities entail sending a submittal from the submitter to the NRC, either via electronic format (through transmission or media) or as a physical object (*e.g.*, video or audio).

• *Capture* relates to the receipt of electronic objects, with notifications provided according to an approved service list, preferably through e-mail. Upon receipt at the NRC, each submittal is staged for additional processing.

• *Index & Cross-Reference* are two distinct processes. Each submittal must be indexed based on prescribed profile templates. In addition, as part of the cataloging process, a submittal may be identified (or cross-referenced) as part of a package or compound document.

• *Store* manages the storage location of a submittal, *i.e.*, within a folder or larger collection for electronic submittals, or the physical media location for submittals provided on optical storage media (*e.g.*, CD–ROM) containing text, data, and objects. This process involves applying security and audit controls, as well as the appropriate retention schedule.

• *Search & Retrieve* operations involve querying the bibliographic header and content, displaying the pertinent object(s), and, if desired, printing all or part of the displayed object(s).

• *Create & Revise* activities facilitate the creation or revision of new documents using content that has been extracted (copied and pasted) from original submittals.

• *Copy & Distribute* activities involve maintaining distribution (service) lists and providing the means to copy or download an individual document or a collection of documents.

These activities may also involve reproduction when the need arises to generate a hard copy of a submittal (*e.g.*, ''8.5″ x 11″ paper'', drawings, etc.).

Finally, there was an assessment of the existing NRC document and records management systems environment as well as requirements for enhancements to support the large document business requirements.

Assessment and Alternatives

The NRC assessed a number of alternatives to the existing technology

infrastructure, current and planned operating procedures for processing documents, and regulatory requirements to determine how the identified objectives, issues, and technical requirements can be addressed while ensuring that—

- Document fidelity and integrity is preserved (*e.g.* organization, accuracy, completeness);
- Documents are accessible to users via commonly used computer configurations;
- The information is available on reliable and controllable media; and
- Unique submittals with special software/hardware components can be handled.

The assessment also considered that the NRC should provide guidance to participants in the proceeding well in advance of when large, complex filings are reasonably anticipated. The guidance, as well as the underlying technology and procedures, would address matters such as processes, file sizes, file formats, document organization overviews to facilitate reconstruction of the complete filing, labeling formats, and alternative transfer media.

This section presents general concepts and four alternatives for handling large, complex electronic submittals in the HLW proceeding.

General Concept

The overall information infrastructure for receiving and managing HLW-related documents involves several existing agency information systems. Participants in the proceeding will primarily send submittals to the NRC in the preferred PDF format via EIE, which provides a Web-form (an entry form similar to that of an overnight express mail carrier shipping form) for the submitter to accurately identify what is being transmitted. Upon receipt, each submittal would be entered into ADAMS. Once captured within ADAMS, the submittal would be available for internal use by agency staff, and the information would be made publicly available (as appropriate) via the EHD. Variations on this general process and issues associated with large, complex documents are described in the following sections.

Alternative 1

Description: Documents, images, and other submittal components are submitted through the EIE as a single file, and the EIE Web-form serves as the transmittal letter. The NRC captures large files as single units, without the need for any manual manipulation, such as breaking a submission into workable pieces. Based on the service list, an e-mail is sent to provide notification of receipt and a link from the EIE server to the file for immediate access by parties and participants to the proceeding. In addition, the file is made available (as appropriate) to the EHD. Interested parties can search on the bibliographic header information, the content, or a combination of the two. Retrieval of a document is directly to the user's desktop.

Positives: This alternative would satisfy the electronic transmission requirements of 10 CFR Part 2, Subpart J. This alternative primarily benefits and is less restrictive to the submitter. That is, the submitter dictates the form and format of the content, and the submittal comes in as a single optimized PDF format file.

Negatives: Submittal file size could be very large (potentially several hundred MB), particularly if graphics are widely used. The transmission may be problematic because of service interruptions or time-outs attributable to the very long transfer times required for large files. File sizes could also make this alternative unfeasible for subsequent users of a file, primarily because of download delays and time-outs. In addition, although any executables contained in the submittal could be stored in the EHD, they could not be indexed for search and retrieval or accessed online. The executable file would need to be downloaded and run locally.

Alternative 2

Description: The only object transmitted through the EIE is the transmittal letter for the large, complex document, which notifies the NRC of an impending package submittal. All other electronic files pertaining to the submittal are sent on optical storage media (*e.g.*, CD–ROM), which is delivered to the NRC via an overnight express mail carrier. Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter for immediate access by parties and participants to the proceeding. All text-based components (*e.g.*, narrative with embedded graphics) are rendered as optimized PDF format files. The NRC extracts each file from the optical storage media (*e.g.*, CD–ROM) and makes the files available (as appropriate) to the EHD as either individual objects or a compound document, depending on the document organization. The NRC also links a bibliographic header to the appropriate optical storage media (*e.g.*, CD–ROM) for files or objects that are not candidates for extraction (because of some technical constraint). Interested parties can search the EHD on the bibliographic header, the content, or a combination of the two. Retrieval of a document or specified component(s) is directly to the user's desktop. Additionally, the NRC provides copies (upon request and for a fee) of the optical storage media (*e.g.*, CD–ROM) for public access.

Positives: The NRC provides guidance to the submitter to facilitate processing and use within the agency. This alternative also avoids potential problems associated with submitting large files via the EIE.

Negatives: This alternative does not meet the electronic service requirements of 10 CFR part 2, subpart J. There may also be a delay in parties and participants receiving documents. As compared with Alternative 1, additional processing will be required to extract, profile, and store files in a timely manner. In addition, use of this alternative could adversely affect document fidelity and integrity (*e.g.* organization, accuracy, or completeness) which could affect the efficient conduct of an adjudication, as well as for agency recordkeeping and eventual turnover to NARA.

Alternative 3

Description: Documents, images, and other components (including the transmittal letter and enhanced Web-form) are transmitted through the EIE as multiple segmented files (''chunks'') of a single submittal. All text-based components (*e.g.*, narrative with embedded graphics) are rendered as optimized PDF format files. Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter and the various segmented files for immediate access by parties and participants to the proceeding. Upon receipt and subsequent processing, the NRC makes the segmented files available (as appropriate) to the EHD as a ''package'' or ''compound document.'' Interested parties can search on the bibliographic headers, or content, or a combination of both. Retrieval of selected components is direct to the user's computer.

Positives: This alternative satisfies electronic transmission requirements of 10 CFR part 2 and allows submission via the EIE. It also allows the NRC to provide guidance to have precisely defined segments and bibliographic header information associated with each segment. The segmentation facilitates later use and access.

Negatives: This alternative requires the EIE to facilitate the transfer, segregate component content from

bibliographic header information and the transmittal letter, and make that information available to the EHD. A possible fatal flaw is that some file types may not be able to be segmented into manageable sizes (*e.g.*, graphic-oriented materials showing subsurface geology in color or computer modeling information and/or software), and some materials may not be accessible via the EHD.

Alternative 4

Description: All text-based components (*e.g.* narrative with embedded graphics) are rendered as optimized PDF format files and transmitted in manageable segments. All non-text components (*e.g.*, runtime executable software, viewer or printer executables) that are not suitable for an optimized PDF file are placed on optical storage media (*e.g.*, CD–ROM). When necessary, due to the nature of the submittal, a submittal letter identifies all electronic files that comprise the submission, clearly indicating which components are submitted via EIE, and which are submitted on optical storage media (*e.g.*, CD–ROM). The submittal letter, enhanced Web-forms, and all segmented text files are sent through the EIE. The optical storage media (*e.g.*, CD–ROM) containing the complete submission (*i.e.*, text-based segments submitted via EIE and any files submitted only on optical storage media) are delivered to the NRC and other parties via an overnight mail carrier or other overnight delivery service. The NRC links a bibliographic header to the optical storage media (*e.g.*, CD–ROM) component of the submission.

Based on the service list, the NRC sends an e-mail containing links from the EIE server to the transmittal letter and the various components submitted through the EIE for immediate access by parties and participants to the proceeding. The NRC indexes the text-based components sent via EIE and makes them available to the EHD as a ''package'' or ''compound document.'' Additionally, the NRC provides copies (upon request and for a fee) of the optical storage media (*e.g.*, CD–ROM) for the public. Interested parties can search on the bibliographic header information, content, or a combination of both. Retrieval of text-based components is directly to the user's computer, and non-text components are retrievable from the optical storage media (*e.g.*, CD–ROM).

Positives: This alternative combines the best features and advantages of Alternatives 2 and 3, including text-based component submission through the EIE and non-text component submissions via optical storage media (*e.g.*, CD–ROM). This alternative provides several means to optimize a submission and allows the NRC to process the submission appropriately; provide access to end-users (*i.e.*, adjudicatory proceeding participants and the general public); and prepare for the eventual transfer to NARA.

Negatives: Processing by the NRC staff will need to be closely coordinated to maintain the integrity of the various submittal components (segmented files stored in ADAMS with the bibliographic header records that point to optical storage media, such as a CD–ROM).

Documentary material submitted on optical storage media and sent by overnight mail (or other expedited delivery services) would not meet the electronic transmission requirements of 10 CFR part 2, subpart J. There may be a delay in parties and participants receiving document components contained only on the optical storage media (*e.g.*, CD–ROM).

Planned Actions

Alternative 4 is the recommended approach for the NRC to meet the identified objectives. The NRC believes that this alternative provides the best means for transferring the wide variety of file types and sizes received from parties and participants in the proceeding, as well as the most practical means for delivering electronic information to parties and participants in the HLW adjudicatory proceeding, the presiding officer, and the Office of the Secretary (SECY), under the requirements of 10 CFR part 2, subpart J.

Toward that end, the agency will take the following steps:

- Develop guidance for use in generating HLW proceeding submissions that specifies the size, file characteristics, and method (either EIE or optical storage media) for different submittal types (i.e. simple, large, or complex). This guidance will also provide direction concerning the information the agency requires to ensure proper identification of each segment.
- Implement enhancements to the agency's existing IT/IM systems (such as an improved EIE capability) in anticipation of storage, search, and retrieval needs, as they pertain to Alternative 4.
- Implement enhancements to the agency's current document processing work flows in anticipation of the receipt, indexing, and distribution of information, as they pertain to Alternative 4.
- Develop a rule change to implement the recommended alternative.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission has evaluated the impact of the proposed rule on small entities. The NRC has established standards for determining who qualifies as small entities (10 CFR 2.810). The Commission certifies that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The proposed amendments would modify the NRC's rules of practice and procedure in regard to the HLW licensing proceeding. Parties to the HLW licensing proceeding will be required to submit their filings during the proceeding according to the standards in the proposed rule. Some of the participants affected by the proposed rule, for example, DOE, NRC, the State of Nevada, would not fall within the definition of ''small entity'' under the NRC's size standards. Other parties and potential parties may qualify as ''small entities'' under these size standards. However, the required standards will overall make it easier for those parties who are small entities to participate in the HLW licensing proceeding.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because these amendments would not include any provisions that require backfits as defined in 10 CFR chapter I.

List of Subjects in 10 CFR Part 2

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

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; and 5 U.S.C. 553; the Nuclear Regulatory Commission is proposing the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); 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. 161 b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 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 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). 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). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.1001, definitions of ''Complex document,'' ''Large document,'' and ''Simple document'' are added to read as follows:

§ 2.1001 Definitions.

* * * * *

Complex document means a document that consists (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature. For example, specialized submissions may include runtime executable software, viewer or printer executables, dynamic link library (.dll) files, large data sets associated with an executable, and actual software code for analytical programs that a party may intend to introduce into the proceeding.

* * * * *

Large document means a document that consists of electronic files that are larger than 50 megabytes.

* * * * *

Simple document means a document that consists of electronic files that are 50 megabytes or less.

* * * * *

3. In § 2.1003, the introductory text of paragraph (a) and paragraph (a)(1) are revised, and paragraph (e) is added, to read as follows:

§ 2.1003 Availability of Material.

(a) Subject to the exclusions in § 2.1005 and paragraphs (b), (c), and (e) of this section, DOE shall make available, no later than six months in advance of submitting its license application to receive and possess high-level radioactive waste at a geologic repository operations area, the NRC shall make available no later than thirty days after the DOE certification of compliance under § 2.1009(b), and each other potential party, interested governmental participant or party shall make available no later than ninety days after the DOE certification of compliance under § 2.1009(b)—

(1) An electronic file including bibliographic header for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant or party; provided, however, that an electronic file need not be provided for acquired documentary material that has already been made available by the potential party, interested governmental participant or party that originally created the documentary material. Concurrent with the production of the electronic files will be an authentication statement for posting on the LSN website that indicates where an authenticated image copy of the documents can be obtained.

* * * * *

(e) Each potential party, interested governmental participant or party shall continue to make available to other participants via the LSN documentary material created after the time of its initial certification in accordance with paragraph (a)(1) through (a)(4) of this section.

4. In § 2.1005, paragraph (i) is added to read as follows:

§ 2.1005 Exclusions.

* * * * *

(i) Correspondence between a potential party, interested governmental participant, or party and the Congress of the United States.

5. In § 2.1012, paragraph (a) is revised to read as follows:

§ 2.1012 Compliance.

(a) If the Department of Energy fails to make its initial certification at least six months prior to tendering the application, upon receipt of the tendered application, notwithstanding the provisions of § 2.101(f)(3), the Director of the NRC's Office of Nuclear Material Safety and Safeguards will not docket the application until at least six months have elapsed from the time of the certification. The Director may determine that the tendered application is not acceptable for docketing under this subpart if the application is not accompanied by an updated certification pursuant to § 2.1009(b), or if the Secretary of the Commission determines that the application cannot be effectively accessed through the Commission's Agencywide Documents Access and Management System (ADAMS).

* * * * *

6. In § 2.1013, paragraph (a)(2) and (c)(1) are revised to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

* * * * *

(a) * * *

(2) The Secretary of the Commission will establish an electronic docket to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or, for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

* * * * *

(c)(1) All filings in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area under part 60 or 63 of this chapter shall be transmitted by the submitter to the Presiding Officer, parties, and Secretary of the Commission, according to the following requirements—

(i) ''Simple documents'' must be transmitted electronically via the NRC Electronic Information Exchange (EIE);

(ii) ''Large documents'' must be transmitted electronically in multiple transmissions of 50 megabytes each via EIE;

(iii) Those portions of complex documents that are amenable to electronic submission must be transmitted electronically. Those portions that are not amenable to electronic transmission must be delivered on optical storage media. The optical storage media must include the complete document, including the

portions of the document that have been transmitted electronically;

(iv) Electronic submissions must have 300 dots per inch (dpi) as the minimum resolution for bi-tonal, color resolution, and grayscale resolution.

(v) Electronic submissions must be generated in the appropriate PDF output format by using:

(A) PDF—Formatted Text and Graphics for textual documents converted from native applications;

(B) PDF—Searchable Image (Exact) for textual documents converted from scanned documents; and

(C) PDF—Image Only for graphic-, image-, and forms-oriented documents. In addition, Tagged Image File Format (TIFF) images and the results of spreadsheet applications must to be converted to PDF, except in those rare instances where PDF conversion is not practicable.

(vi) All electronic submissions must be free of hyperlinks to other documents or websites, provided, however, that electronic submissions to the hearing docket may contain hyperlinks within a single PDF file, if those links are created using PDF authoring software;

(vii) All electronic submissions must be free of author-imposed security restrictions.

* * * * *

Dated at Rockville, Maryland, this 20th day of November, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–29557 Filed 11–25–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model 717–200 airplanes. This proposal would require a general visual inspection to detect corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer structure, and to detect corrosion of the left- and right-hand elevator sector pinch bolts and associated holes, as applicable; and corrective actions, if necessary. This action is necessary to detect and correct corrosion of the left- and right-hand horizontal stabilizer hinge fitting bolts, barrel nuts, and the associated holes in the horizontal stabilizer structure, and the left- and right-hand elevator sector pinch bolts and associated holes, which could lead to loss of a hinge fitting and reduced structural integrity of the horizontal stabilizer. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 12, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–212–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–212–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–212–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that the barrel nuts and bolts used to attach the horizontal stabilizer hinge fittings to the rear spar of the horizontal stabilizer were not properly protected against corrosion during assembly of certain McDonnell Douglas Model 717–200 airplanes. In addition, there is the possibility that the left- and right elevator sector pinch bolts may not