

Jan. 26, 1981

SECY-81-48A



RULEMAKING ISSUE
(Affirmation)



For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: FINAL RULE 10 CFR PART 60 - "DISPOSAL OF HIGH-LEVEL
RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES-LICENSING
PROCEDURES" (SECY-81-48)

Purpose: To forward to the Commissioners for their approval, information implementing the Commission's policy to support Executive Order 12044. Minor page modifications to SECY-81-48 are also enclosed.

Discussion: In accordance with its announced policy to support the basic objectives of Executive Order 12044 to improve government regulations, the Commission has directed the staff to develop appropriate procedures, including procedures designed to implement the criteria for the approval of significant new regulations set out in section 2(d) of the Executive Order. This paper requests the Commission to make a formal determination that the final procedural rule 10 CFR Part 60 satisfies the criteria for the approval of significant regulations set out in section 2(d) of the Executive Order. The attached fact sheet (Enclosure A) which contains information relating to these criteria, has been prepared to assist the Commission in making this determination.

The Regulatory Flexibility Act (5 U.S.C. 601) applies only to rules for which a notice of proposed rulemaking was issued on or after January 1, 1981. The proposed rule for 10 CFR Part 60 was issued on December 6, 1979; thus, requirements of the Act do not apply to the final rule for Part 60.

SECY NOTE: This paper is NOT identical to advance copies which were distributed to Commission offices on January 26, 1981. Pages 21 through 24 of Enclosure B (referred to on page 2 of the basic staff paper) have been added.

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Minor modifications to SECY-81-48 are submitted as Enclosure B. These modifications are primarily clarifications and minor corrections and do not significantly change the rule.

Changes made to Enclosure A of SECY-81-48:

- Page 8 Language has been added to the Supplementary Information which clarifies the procedure which could be used where an exemption has not been granted, to determine whether in situ testing is or is not required at a particular site. (The addition of this language on page 8 necessitated the retyping of pages 9-13, which are also provided, although no changes in text occur on these pages.)
- Page 14 "§ 2.101(f)(7)" has been corrected to read "§ 2.101(f)(8) "
- In line 6 the word "facilities'" should have read "facility" and has been corrected.
- Page 20 In response to Item #12 in Commissioner Bradford's 12/18/80 memo, the Supplementary Information has been revised to explicitly state that specificity with respect to the criteria used to evaluate alternative sites may be provided at the time the technical criteria are proposed. (The addition of this language on page 20 necessitated the retyping of pages 21-24, which are also provided, although no changes in text occur on these pages.)
- Page 25 On the first line of this page, the word "may" has been substituted for "shall," to reflect the staff's original intent that the language be discretionary, and the term "application" has been changed to "environmental report." The phrase "in § 51.40 of this chapter" has been added to the end of the first sentence to indicate where the numbers of sites and media are specified.
- Page 30 "§ 2.101(f)(7)" has been corrected to read "§ 2.101(f)(8)" on line 24 (See also page 14).

Recommendation: That the Commission:

1. Approve the minor changes in the text of the final rule (SECY-81-48), as noted.
2. Determine that the final rule 10 CFR Part 60 satisfies the criteria for the approval of significant regulations set out in section 2(d) of Executive Order 12044.



William J. Dircks
Executive Director for Operations

Enclosures:

- A. Fact Sheet for E.O. 12044
Determination
- B. Change to text of SECY-81-48

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Tuesday, February 3, 1981. Response sheets issued with SECY-81-48 should be used for this purpose.

DISTRIBUTION

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Fact Sheet For Regulations Approval Determination

SUBJECT: 10 CFR Part 60 and Related Conforming Amendments

Criteria for Approval of Significant Regulations
F. O. 12044, Sec. 2(d)

NRC Compliance

1. The proposed regulations are needed

The proposed regulation implements NRC's statutory authority under the Energy Reorganization Act, as amended. Sections 202(3) and (4) of the Energy Reorganization Act as amended provide the NRC with licensing and regulatory authority over facilities to be built and operated by the Department of Energy for the disposal of high-level radioactive wastes generated by activities licensed under the Atomic Energy Act and certain DOE programs. The rule establishes procedures to be followed in assuring the protection of public health and safety. In addition, the rule makes possible public participation in the development of those procedures, and enables the process to be completed in a timely manner. On December 5, 1979, the NRC published for comment, a proposed rule to implement NRC's statutory authorization to license and regulate the disposal of high-level radioactive wastes in geologic repositories. The final rule establishes the procedures that DOE must follow to secure the necessary license for construction and operation of geologic repository. For additional information see SECY-80-474, and its Supplements, SECY-80-474 A-D, and SECY-81-48.

2. The direct and indirect effects of the regulations have been adequately considered.

The direct and indirect effects were fully considered in the Environmental Impact Appraisal and the Value/Impact Assessment prepared in connection with the proposed rule. See SECY-79-580 (Enclosures B and E). Further, the environmental impacts associated with the regulations were reexamined in SECY-80-474 (Enclosure C) and SECY-80-474A.

3. Alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen.

Alternative approaches were considered on three different aspects of the rule:

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NRC Compliance

- (a) whether the rule should apply to all potential methods for the disposal of high-level radioactive waste or only to geologic disposal;
- (b) at what point in the site screening process should the NRC review commence; and
- (c) whether new regulations or reliance on existing regulations would be the most appropriate NRC action.

Further information on the choice of the least burdensome alternative in light of the NRC statutory mandate to protect public health and safety can be found in SECY-79-580 (Enclosure B).

- 4. Public comments have been considered and an adequate response has been prepared.

On December 6, 1979, the NRC published for public comment the proposed rule 10 CFR Part 60 (44 FR 70408). This proposed rule superseded the General Statement of Policy published for comment in 1978 (43 FR 53869). A total of thirty-four groups and individuals commented on the proposed rule, addressing a variety of issues. Most of the commenters viewed the proposed rule as a significant improvement over the proposed General Statement of Policy (43 FR 53869), and, generally, the comments were supportive of the principles and procedures outlined in the proposed rule. Most comment letters addressed major policy issues, rather than the actual text of the proposed rule. The principal comments received related to multiple site characterization; in situ testing at depth; cost estimates for site characterization; whether the rule should require that DOE select the "best" site; preparation of environmental impact statements; State, local, and public participation; public hearings; the nature of the

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NRC Compliance

information to be included in an application for construction authorization and license termination. The NRC staff has prepared a staff analysis of the issues raised in the comment letters. Copies of the public comments and the NRC staff analysis of the comments are available in the NRC Public Document Room.

5. The regulation is written in plain English and is understandable to those who must comply with it.

The final rule (10 CFR Part 60) has been reviewed and edited for the specific purpose of ensuring that the regulation is clear and can be understood by persons who are required to comply with it.

6. An estimate has been made of the new reporting burdens or recordkeeping requirements necessary for compliance with the regulation.

The final rule sets forth additional information requirements related to issues such as site characterization and environmental effects. These information requirements are necessary for NRC to make a sound licensing decision. In addition, semi-annual reports from DOE on the progress of site characterization and waste form research and development are required as well as any records the NRC may require the DOE to maintain in connection with the licensed activity. Repository requirements are associated with the license application review process. The burdens do not extend beyond DOE as an applicant for a license.

7. The name, address, and telephone number of a knowledgeable agency official is included in the publication.

The Federal Register notice promulgating the final rule contains the name, address, and telephone number of a knowledgeable agency official.

8. A plan for evaluating the regulation after its issuance has been developed.

Licensee and staff experience with the regulation will be used to evaluate the regulation. In addition, this regulation will be reviewed in the second cycle of NRC's periodic and systematic review process (1986-1991).

is supported by the ever-present possibility of lateral changes in the properties of the host rock and the possible presence of inhomogeneities of too small a scale to be detected by remote or borehole techniques. Moreover, in order for NRC to be able to conclude that the alternatives to DOE's preferred site are in fact reasonable alternatives for the intended purpose, in situ testing at depth is [~~probably~~] essential to characterizing alternative sites as well. The NRC will then be able to determine, after considering all relevant environmental factors as contemplated by NEPA, whether a construction authorization at DOE's proposed site should be issued. [~~However~~]Thus, the Commission [~~does-not categorically~~] requires in situ testing at depth in the rule [~~since~~] [~~4~~]It is conceivable, however, that [~~in-some-instances~~] techniques may be developed to obtain the necessary data at a particular site without in situ testing at depth. In such a case, DOE may request an exemption from the in situ testing at depth requirement or, it may decline to include the results of such testing in its environmental report, in which case its application would be subject to denial for failure to supply requested information. (See § 2.101(f)(4).) DOE would be entitled to a formal hearing on such a denial and would at that time have an opportunity to persuade the Commission that in situ testing at a particular site is "not required." DOE, like any applicant for an NRC license, has the burden of establishing that NRC requirements have been met, and the regulations require DOE to undertake any testing needed to determine the suitability of the site for a geologic repository. Thus, if [~~DOE-chose-not-to-explore~~] exploration at depth [~~it-would-not-be-relieved-in-any-way-of~~] were not undertaken, DOE would still have the same burden of obtaining and supplying to the Commission information needed to establish the suitability of the site.

c. Cost Estimates for Site Characterization. Cost estimates for site characterization cited in the supplementary information accompanying the proposed rule were regarded by some commenters as being too low. Much of the data for the cost estimate of \$20 million per site was derived from the Teknekron Inc. report, "A Cost Optimization Study for Geologic Isolation of Radioactive Wastes," May 1979, prepared under contract with Battelle Pacific Northwest Laboratories. The NRC staff has reexamined its previous estimate and still believes that figure of \$20 million was a realistic estimate for the "at depth" portion of the site characterization program considered at that time. Independent support of this figure has been obtained from the cost summary of \$16 million for a program analogous to site characterization conducted by the Bureau of Mines at its Environmental Research Facility in Colorado during 1978-1979.

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

in situ testing at depth in hard rock may range up to 30% more than cost figures for soft rock.

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

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

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

The rule requires submission of an environmental report along with the safety analysis report. If DOE has prepared an environmental impact

statement, that document can be used so long as it contains the information called for in the regulation. However, NRC cannot be bound to accept judgments arrived at by DOE in its environmental impact statement.

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

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

The Commission's views on this subject were set out at length in a report submitted to the Congress on "Means for Improving State Participation in the Siting Licensing and Development of Federal Nuclear Facilities" NUREG-0539, March 1979, cited in the supplementary information accompanying

the proposed rule. The concerns of the commenters on broad policy issues such as "consultation and concurrence" would require actions by parties other than the Commission. Within the context of NRC's existing authority, appropriate opportunities for meaningful State and public participation have been developed. No serious deficiencies in these opportunities have been pointed out to the NRC. In addition, the provisions of the NRC's open meeting policy set forth at 43 FR 28058 (June 28, 1978) will also be applied to the licensing of a geologic repository to the extent practicable. Under this policy, generally, all meetings conducted by the NRC technical staff as part of its review of a particular domestic license or permit application will be open to attendance by all parties or petitioners for leave to intervene in the case.

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

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

g. Public Hearings. The issue of whether public hearings should be mandatory during the pre-licensing and/or licensing stages of geologic disposal of HLW was addressed by a number of commenters. Two commenters suggested that hearings be required prior to site characterization. One commenter suggested that public hearings should be held in the vicinity of a proposed site prior to the approval of a Site Characterization Report, while another commenter suggested that hearings be held prior to in situ testing at depth. It was also proposed by another commenter that public

hearings be held on DOE's research and development work on waste forms. Finally, two other commenters believed that formal hearings should be mandatory prior to granting construction authorization to DOE. [The NRC has considered the possibility of hearings prior to site characterization; and continues to maintain its position as set forth in the Notice of Proposed Rulemaking at 44 FR 70409 that with respect to a geologic repository; reconnaissance-level data alone will not support a presumption that a site is suitable with respect to safety for a repository;--Hence;--any decision on alternative site issues at this early point is likely to require reexamination at the construction authorization proceedings and; therefore;--would be of questionable value:

However;--the NRC has considered the advisability of public hearings at the construction authorization stage;--has determined that such hearings are required in the public interest and has included provisions for mandatory public hearings prior to granting construction authorization (10 CFR 2.104):] These issues were discussed at the time the rule was proposed. The Commission then concluded, in light of the limited information available at the site characterization stage, that formal hearings were not warranted at that point. The commenter did not deny the relevance of the policy considerations identified by the Commission, but would have balanced these considerations differently. But this is a matter of judgment, and the NRC adheres to its original position for the reasons then offered. Also, the NRC must decline to review DOE research and development programs formally. NRC's statutory authority includes "licensing and related regulatory authority" as to certain DOE facilities. NRC's jurisdiction arises when there is a "facility" to consider, i.e., when it is proposed that a particular site be characterized. Although it is

important to follow DOE's program closely, the Commission would not be warranted in formalizing a review process with respect to that program.

In reviewing the procedures for formal proceedings in connection with licensing, the Commission has determined that hearings would be in the public interest prior to the granting of construction authorization. An amendment (in § 2.101(f)(7)(8)) has the effect of mandating such hearings. In addition, hearings will be held upon the request of any interested person prior to finally granting a license to receive and possess high-level radioactive waste at a geologic repository operations area and before granting license amendments to decommission or terminate a license.

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

The rule has also been revised to provide that in cases involving public hearings, the initial decision of the presiding officer shall not be immediately effective. (§ 2.764.) It is further provided that even if no hearing has been held, the Director of Nuclear Material Safety and Safeguards will not issue a construction authorization or license until

expressly authorized to do so by the Commission. These changes, while not issued in direct response to commenters' suggestions, reflect sentiments that the fullest opportunity for formal consideration of the issues is in the public interest.

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

i. Termination of a License. Two commenters opposed the provisions (§60.52) for the termination of a license for a repository after decommissioning. The NRC believes that there will be considerable debate regarding license termination during the period between adoption of rules and implementation of their provisions. Although the NRC could have omitted the topic altogether, it believes that some recognition of the issue is desirable so that the rule covers the entire process. It should be noted that there is no assurance under the language that the license would be terminated since a decision to do so could only be made if

"authorized by law." The Commission wishes to emphasize that criteria to be used in making a decision to decommission a repository are not included in this procedural rule but will be set forth either within the technical criteria of Part 60 or as a future regulation or policy statement.

Changes

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

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

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

The Commission did not intend to restrict DOE's use of radioactive materials for the stated purposes, and has clarified the point by adding a new section, §60.7, which expressly recognizes that DOE (which is exempt from NRC licensing except as expressly required to be licensed) need not be licensed for such preliminary activities. This is not an exemption

under the exemption provisions of the Atomic Energy Act, but rather an interpretation of the Commission's jurisdiction under Section 202 of the Energy Reorganization Act of 1974. In other words, the "facility" that the NRC is licensing is one at which high-level radioactive wastes are actually stored. To the extent that the procedures call for earlier NRC involvement, that involvement would be undertaken with a view to long-term health and safety considerations; but during site characterization and prior to emplacement of waste, there would be no "facility" for storage of high-level waste and no basis for the exercise of licensing authority over the incidental use of source, special nuclear, and byproduct material by DOE.

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

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

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

conducted by DOE at all sites and, as appropriate, explanations of why such work differed from the description of program in the Site Characterization Report.

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

The Commission has declined to modify the common defense and security finding [as-suggested-by], which one commenter [The-Commission's review-of-the-history-of-the-Energy-Reorganization-Act-of-1974-indicates that-NRE's-review-was-deemed-to-be-important-to-protect-the-health-and-safety-of-the-public;-the-Commission-thinks-it-is-appropriate-to-rely-upon-BØE-to-take-action-to-protect-the-common-defense-and-security-inasmuch-as-it-shares-with-NRE-such-responsibilities-under-the-Atomic-Energy-Act:] characterized to be "so vague as to be of no consequence." The proposed "inimicality" findings, §§ 60.31(b) and 60.41(c) reflect the legal standards set forth in the Atomic Energy Act, in particular Section 57c.(2) thereof. Comparable language appears elsewhere in Commission regulations, e.g., 10 CFR §§ 50.57(a)(6) and 70.31(d). With respect to certain activities, however, the Commission requires that a license applicant submit a description of fundamental material controls for the control of and accounting for special nuclear material and also a physical security plan. The present regulations do not require such submissions

from the DOE, and the NRC has, therefore, omitted any specific findings that the fundamental material controls or physical security plan are adequate. In so doing, the NRC takes notice of the fact that the DOE is responsible for maintaining common defense and security at installations of the greatest sensitivity. Further, the Department--unlike any other license applicant--shares with NRC responsibilities under the Atomic Energy Act to protect the common defense and security. And, radiation hazards associated with high-level radioactive wastes make them inherently unattractive as a target for diversion. The NRC has concluded that the DOE should certify that it will provide "such safeguards as it requires at comparable surface facilities ... to promote the common defense and security," § 60.21(b)(3), but that details of the safeguards program need neither be obtained nor reviewed in order for the Commission to be able to make the required finding. While this approach contemplates that the Commission would give great weight to the DOE's certification, it does not foreclose the possibility of common defense and security issues being raised and adjudicated in formal proceedings. The provisions of the Energy Reorganization Act calling for Commission review of high-level waste facilities were designed to assure protection of the health and safety of the public and protection of the environment; considering the fact that the legislative history indicates no equivalent concern about the need for the Commission to review common defense and security issues, the NRC believes the approach outlined is reasonable and appropriate.

[e:]g. Conditions of Construction Authorization. The final rule specifies (§60.32(b)) that the construction authorization "will incorporate" conditions requiring the submission of certain periodic or special reports. This wording differs from that of the proposed rule

which stated that the Commission "may, at its discretion incorporate" these conditions. The NRC agrees with a commenter that such reports will be needed and that there is no reason to reserve discretion, as the proposed rule would have done. The particulars of the conditions would, of course, depend upon the nature of the project that is to be constructed.

A new paragraph 60.32(c) has been set forth in the final rule which states that there will be a set of conditions which are of sufficient importance that the DOE cannot deviate from them without having obtained an amendment to the construction authorization.

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

[g:]i. Inspections. The final rule contains a provision (§60.73(c)) requiring DOE to provide on site office space for the exclusive use of NRC inspectors and personnel.

[h:]j. Participation of Indian Tribes. Several changes have been made in the rule to provide for full participation by Indian tribes in the licensing procedures. These changes generally provide that tribes shall have the same opportunities as governmental units. A new Section 60.64 provides that Indian Tribes shall have the same opportunities as States to submit proposals for their participation in the NRC review. These proposals shall be approved (and may be funded) if appropriate findings can be made concerning the contribution to be made to the licensing review. A new Section 60.65 makes it clear, however, that the Director shall endeavor to avoid duplication of effort when acting on multiple

proposals, to the extent that this can be accomplished without substantial prejudice to the parties involved.

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

l. Differences between planned and completed site characterization work. A provision has been added to the rule that requires DOE to include in its license application a description of site characterization work actually conducted by DOE at all sites considered, and appropriate explanations of why such work differed from the program described in the Site Characterization Report for each site (60.21(b)(4)). It is expected that such a provision will facilitate the evaluation of DOE's site characterization program by the public.

m. Records and Tests. The term "significant" has been deleted from Section 60.71(c)(3). The Commission requires notification of all deviations from license conditions, whether or not they might be regarded as "significant."

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Public Law 95-601 (November 6, 1978), the National Environmental Policy Act of 1969, as amended, and

sections 552 and 553 of title 5 of the United States Code, notice is hereby given that the following amendments to Title 10, Chapter I, Code of Federal Regulations are published as a document subject to codification.

PART 2
RULES OF PRACTICE

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

§2.101 Filing of application.

* * * * *

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

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

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

¹As compared to text of proposed rule additions are underscored and deletions are bracketed and lined through.

(4) The Director [shall] may determine the [application] environmental report to be not complete and therefore not acceptable for processing if it fails to include site characterization data, including the results of appropriate in situ testing at depth for each site characterized, with respect to the number of sites and media specified in § 51.40 of this chapter. If such a determination is made, the Director shall request the DOE to submit, within a specified time, such characterization data as the Director determines to be necessary. If the DOE fails to provide the requested data within the time specified, the application shall be subject to denial under Section 2.108.

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

~~[(3)]~~ (4) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter;

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

~~[(4)-An-amendment-of-a-license-specified-in-paragraph-(a)(1);-(2); or-(3)-of-this-section-and-which-involves-a-significant-hazards-consideration;-or]~~

~~[(5)]~~ (6) Any other license or amendment as to which the Commission determines that an opportunity for a public hearing should be afforded.

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

(8) In the case of an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, a notice of opportunity for hearing, as required by this paragraph, shall be published prior to Commission action authorizing [construction and-also-prior-to] receipt of such wastes; [at-the-repository;-this-change-is-in-addition-to-changes-proposed-in-the-prior-notice] this requirement is in addition to the procedures set out in § 2.101(f)~~[(7)]~~ (8) and § 2.104 of this part, which provide for a hearing on the application prior to issuance of a construction authorization.