

review of the license application. A construction authorization for a repository at Yucca Mountain will not be issued unless DOE demonstrates, and NRC staff determines, that applicable regulatory requirements have been met. NRC staff will document the basis for its conclusions on the application in a safety evaluation report.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

11.4 Public Participation

Issue 1: What is the public role in activities under the Nuclear Waste Policy Act related to Yucca Mountain?

Comment. Commenters identified approximately 20 questions about the nature and extent of public participation in a Yucca Mountain licensing proceeding and questioned whether the public participation process was valid. Some commenters asked about the extent of public participation in the process and others argued that public participation was required. One commenter stated expectations that NRC staff will adequately advertise public hearings in advance. Another commenter stated that all interactions between NRC and DOE should be in public meetings or by conference calls that include the public.

Other commenters urged that there be a continuing program of interaction, training, and progress reviews for the public and questioned whether the public has adequate access to the Yucca Mountain site.

Response. NRC staff has offered numerous opportunities for the public to stay informed about activities related to the proposed repository at Yucca Mountain. The extensive program of public involvement has included meetings in Nevada on the mission of NRC, the development of 10 CFR part 63, the review of DOE's draft environmental impact statement, and the development of the Yucca Mountain Review Plan. Formal periods of public comment were provided for development of 10 CFR part 63 and the Yucca Mountain Review Plan. NRC has had public interactions with DOE consistent with a prelicensing agreement and the Commission's Open Meeting Policy (59 FR 48340, September 20, 1994; 65 FR 56964, September 20, 2000), and the public has been given the opportunity to ask questions. Notice of public meetings with DOE is provided in advance and that practice will continue.

In addition, as required by NRC regulations in 10 CFR part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," an

opportunity for a formal adjudicatory hearing will be provided on the license application for high-level waste repository at Yucca Mountain. Members of the public, including representatives of the State of Nevada, local counties, and Indian Tribes, may participate in a hearing on the application provided they are admitted as parties or interested governmental participants to the proceeding.

Substantial documentary material related to the license application will be available to the public and participants in the licensing proceeding via the Licensing Support Network, which is accessible over the Internet, as required by 10 CFR part 2, subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository."

If the Yucca Mountain Review Plan is revised or updated in the future, NRC will decide, depending on the nature and extent of the changes, whether to circulate it for public comment.

No changes were made to the Yucca Mountain Review Plan in response to these comments

Issue 2: What assistance will NRC staff provide to Native American Tribes with respect to the licensing of the potential high-level waste repository at Yucca Mountain?

Comment. A commenter stated that NRC staff was not interested in helping or working with members of Native American Tribes and asked that the hearing process be extended for 10–15 years to enable tribal members to prepare to participate in the proceeding.

Response. NRC recognizes the unique status of Native American Tribes. Consistent with the Nuclear Waste Policy Act, NRC regulations in 10 CFR part 63, subpart C, require that any "affected Indian Tribe" (a status conferred by the Department of the Interior) be kept informed concerning activities regarding the proposed repository and also provide opportunities for affected Indian Tribes to participate in the review of the license application under certain circumstances. Further, as noted in response to Issue 1, above, Indian Tribes may also seek permission to participate in the adjudicatory proceeding pursuant to 10 CFR part 2, subpart J.

As a general matter, representatives of Indian Tribes, as well as other members of the public, have been notified of public interactions concerning the proposed repository and have had access to the Yucca Mountain Review Plan and other documents related to the repository.

The requested, lengthy extension of the hearing process would be inconsistent with three- to four-year statutory deadline for a NRC decision on the construction authorization for the proposed repository.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

11.5 U.S. Department of Energy Responsibilities

Issue 1: What are DOE's responsibilities at the proposed repository?

Comment. One commenter asked whether DOE would be allowed to transfer responsibilities and liabilities to corporate vendors.

Response. Under NRC regulations, the license applicant or licensee is responsible for safety and regulatory compliance with NRC regulations, even if some activities are performed by a contractor. Thus, DOE is responsible for ensuring that the proposed repository is constructed, and waste handling and disposal activities are conducted, in compliance with NRC requirements. NRC will conduct the necessary inspection and review activities to determine compliance with NRC regulations, and take action, as necessary, to enforce those requirements, including modifying, suspending or revoking any license issued, if warranted.

No changes to the Yucca Mountain Review Plan were made in response to this comment.

Issue 2: Who is financially responsible for the safe operation of a repository?

Comment. One commenter asked who would be financially responsible for limiting radioactive release from the repository. Another commenter expressed concern that the costs of cleaning up after an accident or sabotage would be astronomical and asked who would be responsible for these costs. Another commenter stated that there are no stewardship funds for Yucca Mountain.

Response. Federal statutes provide that DOE would be licensed by NRC, if appropriate, to construct and operate the high-level waste repository at Yucca Mountain. Thus, DOE, an agency of the Federal Government, would be financially responsible for ensuring that activities at the repository are conducted safely.

As the Commission stated in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55771, November 2, 2001):

Part 63 does not alter whatever liability the Federal Government may have for damage to