

9. DISCLOSURE OF DOCUMENTARY MATERIAL

Under § 2.1003 of the LSN Rule, the NRC, DOE, and any other party, potential party, or interested governmental participant is obligated to make available to one another all of their documentary material, as defined by the LSN Rule. This availability through a website on the Internet fulfills discovery obligations related to the licensing proceeding for the potential high-level radioactive waste repository at Yucca Mountain. The documentary material is to be provided in electronic format, as specified in the rule for textual or non-textual material, together with a bibliographic header file.

In the case where material is not suitable for imaging or searchable full text, or is considered privileged, an appropriate bibliographic header must still be made available.

Under § 2.1009 of the LSN Rule, a participant must certify that all of its documentary material as defined in the LSN Rule has been made available, and this certification provides a measure of assurance that no relevant documents have been withheld. The Commission believes that the burden of having a participant generate a separate listing of documents in its possession that it determines are not relevant to the licensing proceeding (for review by other participants) far outweighs the usefulness of such a listing.

Under § 2.1004 of the LSN Rule, a procedure exists whereby a participant can request a copy of any other participant's document that it maintains has not been made available in electronic form. Access to that document must be provided within five calendar days, unless a different time is set by the Pre-License Application Presiding Officer or the Presiding Officer. Under § 2.1012 of the LSN Rule, if a participant does not comply with the above requirements, it could face adjudicatory sanctions up to and including denial of party status. In the case of DOE, the appropriate prehearing sanction could be a declaration that the tendered license application is not acceptable for docketing.

In light of the above, the NRC will rely on participant certifications that they have made all their documentary material available to the other participants. Similarly, the NRC will rely on the participants themselves to provide prompt notice of any potential violation of document availability certifications.