

May 31, 1988

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MINUTES OF THE HLW LICENSING SUPPORT SYSTEM  
ADVISORY COMMITTEE MEETING

APRIL 18-19, 1988  
Washington, D.C.

MEETING LOCATION AND ATTENDANCE

The sixth meeting of the HLW Licensing Support System Advisory Committee (hereafter referred to as the committee) was held on April 18, 1988 from 9:00 a.m. to 5:00 p.m. and April 19, 1988 from 9:00 a.m. to 3:30 p.m. The meeting was held in the offices of The Conservation Foundation in Washington, D.C.

A list of committee members and members of the public who attended this meeting is appended hereto as Attachment 1.

APPROVAL OF THE MINUTES

As its first item of business, the committee discussed the draft minutes from the committee's March 22-24, 1987 meeting. Several committee members indicated that they had not had time to review these draft minutes in sufficient detail. Others indicated that they would provide suggestions to the facilitator for changes that they felt were relatively minor and non-substantive in nature. Thus, no changes to the draft minutes of the March meeting were officially approved by the committee.

EXPLANATION OF CHANGES MADE TO THE NRC'S DRAFT RULE

NRC representatives explained that the draft text of a new Subpart J to 10 CFR Part 2 that was distributed to committee members in advance of this meeting was a "strawman text" which, due to time pressures, had not been reviewed and approved by the full NRC negotiating team before its distribution. NRC staff then distributed to committee members a revision to the original "strawman text" which did represent the NRC negotiating team's current positions. This latter version of the draft text of a new Subpart J (hereafter referred to simply as the draft rule) included a comparative text explanation of the changes made to the draft rule from the original text. (The original text of the draft rule, dated April 8, 1988, and the first revision to this text, which should be dated April 18, 1988, are appended hereto as Attachments 2 and 3.)

NRC staff then provided committee members with an overview of the major changes that were made to the original April 8, 1988 draft. Upon completing this presentation, it was clarified that the "Topical Guidelines" which address the scope of discoverable material that may be for entered into the Licensing Support System (LSS) and the licensing schedule that were appended to the original draft should also be considered as appended to the revised draft.

DOE representatives stated that as long as it was understood that the topical guidelines are not intended to nor could they be construed to dictate the contents of DOE's Site Characterization Plan, they did not have a problem with them. Other committee

members indicated that their understanding of the purpose of the lists which constituted the topical guidelines was consistent with DOE's qualifying statement and that this understanding should be captured in the preamble to the rule.

When asked whether there were any questions about the changes NRC had made to the draft rule, representatives of the State of Nevada stated that that it would not be possible for them to discuss certain sections in the draft rule which they felt went beyond the scope of this rulemaking as stated in the original Federal Register notice announcing NRC's intent to form an advisory committee. When questioned about this, Nevada representatives indicated that they viewed the draft rule as containing essentially two separate components, the first covering Sections 2.1000 through 2.1014. They stated that these sections were directly related to the proposed use of the LSS, whereas the second half of the draft rule, Sections 2.1015 and beyond, was in some instances only indirectly related to the use of the LSS and in other instances not at all related to the use of an LSS. NRC responded that there were many provisions in the latter half of the rule which were directly related to the use of the LSS.

Nevada representatives stated that they were not necessarily disagreeing with NRC's proposed approaches to the latter half of the draft rule, but that they simply did not have the authority to discuss or make commitments on behalf of the State of Nevada on the issues which are covered in the latter half of the draft rule. They added that if these provisions were to be discussed by the committee, it would probably require adding another meeting or two to the committee's present schedule. Finally, they indicated that it is likely to be very difficult for the State of Nevada to agree to the provisions of Section 2.1022 of the draft rule which call for the final decision of the Atomic Safety Licensing Board on the construction authorization to become immediately effective pending an appeal to the Commission.

The NRC spokesperson explained that the "immediate effectiveness" provision did not represent a change from the existing licensing process for nuclear reactors. Nevada representatives responded that the fact that this provision did not represent a change from the existing licensing process for nuclear reactors was irrelevant because the reactor licensing process should not necessarily dictate what process should be used for licensing the nation's first high-level nuclear waste repository. Second, they indicated that if the State of Nevada was being asked to publically agree to such a provision it would require a decision at the highest levels of state government. DOE representatives suggested that this problem might be handled by simply referencing the appropriate provisions of NRC rules rather than including them in this draft rule.

The spokesperson for the environmental coalition agreed with Nevada representatives that certain sections of the draft rule seemed to go beyond the original scope of the rulemaking as she understood it. She also questioned whether the draft rule recognized the need for an equivalent to a Freedom of Information Act (FOIA) fee waiver with respect to access and use of the LSS by potential parties to the proceeding. NRC representatives stated that the draft rule simply referenced provisions to this

effect and that, since they did not disagree with the need for an equivalent to a FOIA fee waiver, they felt that this problem could probably be resolved satisfactorily.

With no other general questions or comments, the committee agreed to take a recess to provide committee members who had not yet seen the newly revised text an opportunity to review it in detail. The committee also agree that upon reconvening, they would discuss the draft rule section by section.

#### DISCUSSION OF THE DRAFT RULE

##### Section 2.1000 - Scope of Subpart

NRC representatives explained that the intent of this section was to incorporate by reference certain provisions of Subpart G, NRC's rules of general applicability, to the rule for the HLW licensing proceeding which will be published as Subpart J in Part 2.

NRC was asked why sections 2.740 and 2.741 were not listed in the provisions of Subpart G that would be incorporated by reference. NRC representatives responded that these sections were essentially lifted verbatim, with minor changes to accomodate the special circumstances of the HLW licensing proceeding and the proposed use of the LSS into sections 2.1018 and 2.1019 of this draft rule.

##### Section 2.1001 - Definitions

**Bibliographic Header** The representative of the environmental coalition stated that the definition used for this term might be a problem because of the limitations that are placed on public access to the LSS under Section 2.1007. The facilitator briefly reported on the activities of the technical work group which, he explained, is likely to recommend that the parties be required to complete a simple "bibliographic header," which would include information on such item as the date, author, recipient and subject of the document, and that the LSS Administrator would be required to prepare a more complete header for the document which would include more information than that supplied by the party. This additional information might include such items as keywords and an abstract of the document. NRC representatives pointed out that NRC and DOE documents would continue to be available to the public as they are now and explained that their intent was to leave this issue open for now and resolve it at some later date through the LSS Administrator and the use of the proposed advisory review board which will make recommendations to the LSS Administrator. No specific changes to this definition were suggested.

**Document** NRC representatives were asked what the phrase "associated with the business of" was meant to imply. They replied that they intended that this phrase would make it clear that contractor documents as well as agency documents were meant to be included in the LSS. The committee agreed to strike the part of this definition that was added by the NRC negotiating team from the definition used in the original text, such that the definition would read: "Document means any written, printed, recorded, magnetic, graphic matter or other documentary material, regardless of form or characteristic."

EEI representatives stated that the term documentary

material was not defined in this definition section but it was defined in the text of the rule under Section 2.1003. The committee agreed that the sentence which defined this term in Section 2.1003 should be transferred to the definitions section, striking the clause "not otherwise privileged," such that the definition for "documentary material" would be "any material or other information that is relevant to, or likely to lead to information that is relevant to, the licensing of a geologic repository pursuant to part 60 of this chapter." NRC representatives indicated that they intended for the term "documentary material" to take the place of the term "discoverable material" in the text of the rule.

**Circulated Draft** The committee discussed the definition posed in the draft rule for this term at length. A representative of the environmental coalition suggested that the definition should include all "draft" documents that are subject to review by someone other than the primary author. Nevada representatives stated that they did not think that all of DOE's draft documents needed to be captured in the system but that there clearly would be a need to capture some subset of the draft documents produced by DOE. They suggested that there may be some other way to define this term other than by the level of the organization which produces the draft, but they did not present a specific proposal for doing this.

DOE representatives expressed concerns that the NRC's proposed definition was not consistent with the discussion which had taken place at the previous meeting concerning in "concurrency drafts." They explained that this term, "concurrency draft," has a particular meaning in the parlance of DOE's records management system and that by agreeing to include such drafts, they felt they were making a concession because such drafts are not typically considered "agency records" until they are made final. They explained that the same document might go through several levels of concurrence and that their suggested approach would capture all changes that are made to the document as it passes through these various levels of concurrence. DOE representatives explained that in addition to including "concurrency drafts" in the LSS after the subject document has been made final, they intended to include the concurrence sheets which summarized suggested revisions to the document, as well as any memoranda which commented upon the draft document.

NRC representatives were then asked what the term "final document" was meant to imply. They responded that it was meant to include any document which is signed by an agency official, regardless of what level in the bureaucracy it was produced. Thus, signed memoranda which comment upon draft documents would be considered final documents for purposes of entry into the LSS. They noted that in a litigatory proceeding there would be a problem with the reliability of any document which was not signed by an agency official or party. It was suggested that NRC insert a definition for the term "final document" into this section.

DOE representatives stated that it seemed as if some committee members assume that there will be a "smoking gun" behind all of DOE's concurrence drafts. They stated that this was not true and that including all "preliminary drafts" in the LSS, before they reach the stage of a "concurrency draft," would

simply bog the system down to such an extent that if there were any "smoking guns," they would never be found. They reiterated that they planned to institute a mechanism for capturing "differing professional opinions" into DOE's records management system. They also reiterated that, to the extent that there is a "smoking gun," the parties will be much more likely to find it through the use of FOIA requests or derivative discovery once the licensing proceeding commences.

When asked how the issue of including drafts, however it might be resolved, would be implemented at DOE with respect to its contractors, DOE representatives agreed that the agency would have to instruct its contractors to follow whatever records management procedures might flow from the definition that is agreed upon. At a later point DOE clarified that it was their intent that contractor reports and contractor memoranda that are signed and delivered to the agency would be placed in the LSS. That is, contractor documents that are received by the agency as "deliverables" would be entered into the LSS. (Author's note: It was not clear that this interpretation was agreed upon by the committee.)

NRC representatives then suggested the following revision to the definition of circulated draft:

"circulated draft" means a nonfinal document circulated for supervisory concurrence or signature where the final document upon which the circulated draft is based has been revised by someone other than the original author, and in which the original author has not concurred.

The committee did not formally agree on this suggested language but decided to proceed with the discussion of the other provisions of the draft rule and return to the definition of circulated draft at a later point.

(Authors note: Additional suggestions for the definition of "circulated draft" were proposed later in the meeting but were not agreed upon. These are captured in this section of the minutes, rather than in a later section.)

Representatives from the State of Nevada proposed the following definition:

"circulated draft" means a document circulated for review and/or concurrence within or outside of the organizational unit where the document was created (for example, the branch unit within the U.S. Nuclear Regulatory Commission), by the supervisor of that unit or any higher organizational unit, and any documents containing review or concurrence comments.

NRC representatives suggested the following modification to the language they had suggested earlier:

"circulated draft" means a nonfinal document circulated for supervisory review or concurrence which did not become a final document due to revisions made by someone other than the original author, and in which the original author did not concur.

Image It was agreed that the word "microfiche" should be changed to "microform."

Marginalia NRC representatives explained that they did intend to exclude underlining and highlighting notations to a document from the definition of "marginalia" because there is no way of knowing what these notations mean without something else be written in the margins to indicate the reason why the text has been underlined or highlighted. The committee agreed to change the language used to define marginalia as follows: "'marginalia'" means handwritten, printed, or other types of notations added to a document excluding notations which are limited to underlining and highlighting notations."

It was clarified in later discussions that the NRC did not intend for documents which contain marginalia to be automatically captured in the LSS, unless that document was considered an agency record. But rather, according to NRC's position, documents which contain marginalia would generally be discovered through derivative discovery and entered into the LSS thereafter.

Party Representatives of the State of Nevada stated that they were concerned that the definition proposed by the NRC for the word "party" meant that Nevada was losing something that they had thought they had already gained -- that is, automatic party status. They stated that the definition of "party" should acknowledge that the State of Nevada, affected units of local government and affected Indian tribes are necessary parties to the proceeding. When questioned about why Section 2.1014(c) of the draft rule and Section 2.715(c) which is referenced in Section 2.1008 of the draft rule, would not meet Nevada's concerns regarding its intervention rights, Nevada representatives responded that Nevada's intervention rights could potentially be conditioned under these provisions and such a conditioning would be unacceptable. NRC representatives stated that they would be willing to insert language that would attempt to address these concerns into the definition of the word "party."

EI representatives questioned whether including the State of Nevada's intervention rights as part of the definition would be construed as providing intervention rights as an "interested state," as per Section 2.715(c) of Subpart G, or as a "intervenor party," as per Section 2.1014 of the draft rule. Nevada representatives responded that the approach they are suggesting would remove the requirement of petitioning for party status under either of these provisions. Other members of the committee agreed to this approach but only if the State of Nevada was required to file contentions, as would all other parties, at the appropriate stage of the licensing proceeding. Nevada representatives agreed to this condition, but only if the filing of contentions was not required to be a part of a petition for party status.

Potential Party There were no comments on the definition, but the representative of the environmental coalition stated that she would raise concerns that the coalition had about NRC's proposed approach in Section 2.1008 of the draft rule which relates to this definition.

Personal Record EEI representatives questioned whether the implication of the definition posed here, that documents which are required to be created or retained by a party cannot be considered "personal records," was consistent with NRC's intent. NRC representatives responded that it was consistent with their intent.

Definitions Not Included in the Draft Rule Some committee members suggested that the word "discoverable" needed a definition. NRC representatives responded that they had tried to get away from the phrase "discoverable material," as had been used in previous discussions and materials related to the LSS, and rely instead up on the term "documentary material."

Several committee members believed it was necessary to define the word "relevant" up front as "relevant to, or likely to lead to the discovery of information that is relevant to the licensing of the likely candidate site for a geologic repository pursuant to Part 60 of this Chapter."

#### Section 2.1002 - High-Level Waste Licensing Support System

As per the discussion of including a definition of the word "relevant" in Section 2.1001, the committee agreed that either this should be done (as suggested above), or the term "relevant," as used in the first sentence of this section should be followed by the words, "or likely to lead to the discovery of information that is relevant to..."

It was also agreed that the LSS should include documents produced by the parties and potential parties' contractors, and that the second sentence of this section should be changed to reflect this agreement.

#### Section 2.1003 - Scope of the Licensing Support System

The committee agreed to the following changes to this section:

- o The revised language of this section (the second sentence, which defined the term "documentary material," was previously removed to be part of the definition section) was re-numbered paragraph (a).
- o Section 2.1008(d) was transferred to this section and was re-numbered paragraph (b).
- o A new paragraph (c) was created which read: "This rule shall have no affect upon the independently existing rights of any party or potential party to receive documents."
- o The words "not found to be privileged under section 2.1006" was inserted into the text for the new paragraph (a) such that the first sentence of this paragraph read: "The (LSS) shall include all documentary material not found to be privileged under section 2.1006 related to the licensing of the likely candidate site for a geologic repository pursuant to Part 60 of this chapter."

Committee members requested that the next draft of the rule include the "regulatory language to be specified," as per the last sentence of paragraph (a).

#### Section 2.1004 - Submission of Material to the LSS

(Authors note: The committee discussed this section of the rule at length. Several issues that were discussed here related to other sections of the rule, in addition to this section. The following is an attempt to capture the essence of the discussion as it relates to the various paragraphs and subsections of this section of the draft rule, rather than the precise chronological order in which the issues were discussed by the committee.)

#### Paragraph (a)

Environmental representatives noted that the word "final" modifies the word "document" in both subparagraphs (1) and (2). They asked NRC what this was intended to mean and suggested striking the word "final". NRC representatives stated that the reason why the word "final" was used here is to protect agency decision-making processes that are ongoing. The environmental coalition spokesperson responded that this was a valid goal but the wording used in this section does not adequately address situations where there is no "final document" following the creation of a draft document. NRC representatives agreed to change the language used in this section to reflect their intent which was when a final decision is made, regardless of whether it is expressed in a "final document" or not, that this decision, including a decision not to proceed with or act upon some policy suggestion made in a draft document, be the trigger for entering "circulated drafts" into the LSS, however that form might ultimately be defined.

DOE representatives suggested that, for the sake of consistency, the "topical guidelines" should be referenced in section 2.1004(a), as they are in section 2.1004(b), or the reference that is made in section 2.1003 should suffice. NRC agreed to change the draft rule so that the references made to the topical guidelines are consistent.

Nevada representatives asked how the topical guidelines will be enforced if they are only referenced in the rule. They suggested that these guidelines should be included as an appendix to the rule. NRC representatives pointed out that the "excludable" lists that were agreed upon at the last meeting were incorporated into the rule, but the problem with including the topical guidelines (i.e., the includable lists) in the rule, as an appendix or otherwise, is that it would be necessary to amend the rule in order to amend the list. As an alternative, the NRC spokesperson suggested that the list be published as "supplementary information" to the rule, and that the guidelines be referenced in section 2.1010(a) of the rule which addresses the licensing board's role in resolving disputes over relevance.

Nevada representatives stated that it was not important to them whether the topical guidelines were actually incorporated into the text of the rule, but it was important that it be an enforceable component of the rule. The spokesperson for the

environmental coalition suggested that the Pre-license Application Licensing Board (PALB) be required to adopt the topical guidelines as its first order of business, and that any changes to the guidelines be made on the basis of a petition to the board.

The committee agreed with the following with respect to the publication and use of the topical guidelines:

- o The topical guidelines would be referenced in sections 2.1003 (Scope), 2.1004 (Submission of Material), 2.1010 (Pre-license Application Licensing Board), and 2.1012 (Compliance) of the rule;
- o The topical guidelines would be included in the "supplementary information" (i.e., the preamble) to the rule and thereby be published in the Federal Register;
- o NRC would issue the topical guidelines as a "Regulatory Guide," in addition to including it as part of the supplementary information;
- o The PALB would be required to use the topical guidelines in making decisions related to the sections of the rule referred to above; and
- o As with any proposed revisions to NRC Regulatory Guides, any changes to the topical guidelines would be published for purposes of public comment.

Paragraph (b)

EEI representatives suggested that this paragraph needs to specify that bibliographic headers and images are not required for excluded materials. They also asked NRC who will pay for putting material into ASCII format for material that is not submitted in this form. NRC responded that the proposal that they have made in this draft rule is that the LSS Administrator is responsible for this task.

Paragraph (c)

The spokesperson for the environmental coalition suggested that a definition was needed for the term "field notes." Nevada representatives stated that they were working with DOE on the issue of how to handle raw data and field notes in the LSS and that they will present a proposal at the next meeting.

Nevada representatives later suggested that there might be the need for protocols to inform the parties as to how they can gain access to the materials listed under this section that will be "identified" in the LSS through bibliographic headers, rather than entered in searchable full text. NRC representatives stated that their intent was for the bibliographic headers to indicate where the data, or other material listed as unsuitable for full text entry in this section, could be found. The committee agreed with this approach and directed the NRC to revise the language used in this section to reflect their agreement that the headers used to describe the materials listed under this section should include information on how to gain access to the the types of materials listed here.

DOE representatives suggested that there only be one bibliographic header required for all travel vouchers that are funded by the Nuclear Waste Fund. The committee agreed that the language used in the second sentence of this paragraph be changed to reflect this and that the words "Office of Civilian Radioactive Waste Management" be inserted following the words "U.S. Department of Energy" in this same sentence.

Paragraph (e)

EI representatives suggested that the timing of when the reliance criterion will come into play in terms of deciding what should be entered into the LSS needs to be addressed in this section. NRC representatives agreed that this issue needed to be addressed, but suggested that it be done in some other section of the rule.

Paragraph (g)

EI representatives asked how the rule and its implementation would avoid the entry of duplicate copies of documents not just by federal agencies, but by all parties or potential parties. DOE representatives stated that there was no way to completely avoid such duplication, but the use of an electronic accession number should help to minimize this problem. NRC suggested, and the committee agreed, that the minimization of duplicate copies of documents be included in the list of responsibilities of the LSS administrator in section 2.1011.

Timing of and Compliance with the Submission of Materials

(Authors note: A significant topic of discussion under section 2.1004 was the timing of the submission of materials into the LSS and, in particular, the determination of whether DOE has come into compliance with these requirements prior to the docketing of the license application. Since this discussion does not fall neatly under any of the subsections of 2.1004, it is captured here as a separate section in these minutes.)

A representative of the environmental coalition stated that a date certain for the submission of "backlogged" DOE documents was missing from section 2.1004 and from the draft rule in general. She pointed out that if the application is submitted immediately following the NRC staff's determination of completeness for purposes of docketing, the condensed time frames for discovery envisioned by this rule will not work because the parties would not have had sufficient time to review the material. Thus, they argued, some period of time between the determination of "substantial compliance" and docketing was necessary for the parties to conduct discovery. Specifically, they suggested adding a deadline for this purpose into section 2.1004, as was discussed in previous committee meetings.

Nevada representatives agreed that it was necessary to have some minimum period of time between DOE's "substantial compliance" with LSS requirements and docketing, but suggested that the two year time frame that had been previously discussed might be more time than was necessary. They suggested that this issue might best be addressed in section 2.1012. In addition, Nevada representatives suggested that the parties be allowed to

submit a motion to the PALB or the Licensing Board (LB) to hold docketing in abeyance until the LSS is up-to-date with respect to the entry of backlogged DOE documents. This would provide the parties with an opportunity to challenge the NRC staff determination of substantial compliance for purposes of docketing.

NRC representatives responded that docketing is an NRC staff function that will not be given up to the PALB, the LB, or the other parties. As an alternative, NRC representatives suggested that the staff function respecting docketing not occur until after the PALB certifies that DOE is in "substantial compliance" with the LSS rule (i.e., separating the determination of substantial compliance with the LSS rule from docketing). In addition, NRC suggested that the advisory review panel, which is referred to in section 2.1011(d)(11) might play a useful role in advising the PALB with respect to the determination of substantial compliance, and the NRC staff determination with respect to docketing, and that this staff determination consider the timeliness of compliance.

DOE representatives suggested that the NRC staff be required to make a non-binding determination on whether the DOE is in "substantial compliance" with the LSS rule at some appropriate point in time prior to the submission of the application and include in this determination an indication of what it would take for DOE to come into compliance. Such a notice would give DOE a fair warning with respect to what should be expected in the upcoming "acceptance review" of the license application and could also serve as a means to obtain any needed funds from Congress to ensure DOE compliance with the LSS rule.

The committee discussed the following option:

- o the PALB would be established six months after the publication of the rule;
- o the NRC staff would report to the PALB every six months thereafter as to whether DOE is in "substantial compliance" with the LSS rule and what it would take for them to come into compliance; and
- o there be a minimum period of six months between the NRC staff determination of DOE's "substantial compliance" with the rule and docketing under Subpart J.

Included in this option was an approach whereby if NRC staff determined that DOE was not in substantial compliance six months prior to the scheduled date for submission of the application, DOE would then have to decide whether to submit the application under Subpart G, or to attempt to come into compliance with and submit the application under Subpart J six months after they had successfully complied with the requirements of this subsequent.

#### Section 2.1005 - Amendments and Additions

EI representatives questioned whether the five day deadline used in paragraph (a) and the two day deadline used in paragraph (e) will be sufficient for accomplishing the purposes outlined in

these sections. DOE representatives responded that the five day deadline for purposes of verifying whether the document has been entered correctly is both technically feasible and useful to have as a mechanism for ensuring that the parties fulfill their verification responsibilities. There were comments on the two-day deadline specified in paragraph (e).

#### Section 2.1006 - Privilege

EI representatives questioned why the deliberative process privilege had been singled out in paragraph (c) but it had not been singled out in paragraph (a). The committee agreed to change the general reference to "privileges" in the last sentence of paragraph (a) to "the deliberative process privilege." The committee also agreed to insert the words "asserted and" into paragraph (b) such that the beginning of the first sentence would read: Any document for which a claim of privilege is asserted and not upheld by ..."

DOE questioned whether a Protective Order file, as the term is used in paragraph (b), was feasible. NRC responded that it was not necessarily their intent that such a file be included in the LSS, since it was not certain whether the security for limiting access can be guaranteed. Rather, it was their intent that the PALB or LB determine whether the particular material that will be placed into a Protective Order file should be placed into the LSS or be handled through more traditional means. The committee agreed with this approach and, in order to make it clear in the rule, they agreed to change the words "the Protective Order file" to "a Protective Order file."

Finally, the spokesperson for the environmental coalition pointed out that the words "final document," as found in paragraph (c), needed to be changed to be consistent with whatever language is adopted by the NRC on this issue as per discussion of section 2.1004.

#### Section 2.1007 - Public Access and Section 2.1008 - Potential Participants

(Authors note: These two sections are combined here because the issues related to these two sections of the draft rule are highly interrelated and the committee's discussion of these issues reflected their interrelatedness.)

The spokesperson for the environmental coalition stated that they were extremely concerned about the provisions that are found in both of these sections of the draft rule because they tended to be limiting both in terms of the information that would be provided through public access to the LSS and in terms of the criteria for obtaining potential party status. She stated that both of these provisions seemed to be contrary to discussions which had occurred at previous meetings.

NRC representatives responded that the purpose of the LSS was to facilitate the discovery process for the parties and potential parties to the HLW licensing proceeding rather than to improve public access to the information contained in the LSS. They explained that the provisions for public access outlined in the draft rule actually provide the public with an opportunity to gain access to more information and in a more efficient manner than is typically provided. Furthermore, they stated that the

reason for limiting public access to the bibliographic headers for documents that are included in the LSS, rather than providing the public with access to the searchable full text of these documents, as was discussed in prior meetings, is to provide non-governmental parties with sufficient incentives to participate as a potential party. Without limiting public access in this fashion and thereby providing an incentive for non-governmental organizations to petition for potential party status, the NRC representatives explained, such organizations could simply gain access to the searchable full text portion of the LSS by using a terminal located in a public document room.

The spokesperson for the environmental coalition stated that there would be serious disadvantages to using the public document room in the manner suggested here, as opposed to being able to conduct discovery at the location of your choice. NRC representatives responded that there were also serious disadvantages to signing up as a "potential party," including the basic requirement of having to submit your documents into the LSS and comply with the rulings of the PALB. DOE representatives responded that the difference between gaining access to the searchable full text portion of the LSS through a public document room versus through a terminal in the location of one's choice was mainly one of convenience rather than substance.

Nevada representatives stated that they thought the need to provide an incentive to sign up as a "potential party" had been addressed in the "late comer" provisions in section 2.1012. NRC representatives responded that it was their belief that if public access was not limited in the manner specified in section 2.1007 of the draft rule, the so-called late comer provisions of section 2.1012 would not provide sufficient incentives to encourage non-governmental entities to sign up as potential parties.

Nevada representatives stated that if the proposed language in section 2.1007 was to be included in the rule, they wanted the rule to include assurances that any party or potential party can provide access to the LSS, in its entirety (i.e., the searchable full text portion as well as bibliographic headers), to whomever they choose to provide such access. NRC representatives stated that such a provision would be unacceptable. The question was then posed as to whether a party or potential party would be precluded from providing access to the LSS in this fashion if the rule itself did not explicitly preclude them from doing so. None of the committee members knew the answer to this legal question.

After the committee took a break and discussed these issues privately, NRC proposed that:

- o Public access through terminals located in NRC and DOE public document rooms pursuant to paragraphs (a)(1) and (a)(2) of section 2.1007 include access to the "more complete headers" that would be developed by the LSS administrator after the submission of the "bibliographic headers" by the parties, for all documents that are included in the LSS;
- o The "zone of interest" for purposes of determining the standing of a potential party pursuant to paragraph (b) of section 2.1008, shall be based on the topical

guidelines, as well as the other factors outlined in this section; and

- o To protect against the possibility of the number of users of the LSS during the pre-license application period becoming unwieldy, NRC would add provisions to section 2.1008 or elsewhere which would allow for the consolidation of "potential parties."

The spokesperson for the environmental coalition indicated that this approach was acceptable. DOE representatives clarified that this approach would not allow anyone who wishes to become a potential party. NRC responded that it certainly would not allow those who have a purely commercial interest to become a potential party, but it would allow those who could show that their interests fall within the subjects listed in the topical guidelines to become a potential party. NRC representatives added that they felt there is likely to be a self-limiting aspect who might petition for potential party status because of the burdens that are associated with compliance with the LSS rule and the rulings of the PALB.

Nevada representatives requested that a sentence be added to paragraph (a) of section 2.1008, or wherever else it might be appropriate, which would signify that potential parties will have "dial-up" access to the full text portion of the LSS (i.e., access through a modem and a personal computer), and access at remote locations to the electronic images that are included in the LSS if the potential party was willing and able to bear the cost of terminals which will allow for such access. The committee agreed that the draft rule should be changed to reflect this agreement which had been reached at the committee's previous meeting. NRC representatives also stated that under Section 2.1007(a)(1) and (2), NRC and DOE are likely to provide the public with access to images of each respective agency's documents, in addition to access to the "more complete headers" for all LSS documents.

The spokesperson for the environmental coalition stated that language needed to be inserted into section 2.1008 which reflected the agreements that had been reached at the previous meeting with respect to the use of an equivalent to a Freedom of Information Act (FOIA) fee waiver. In particular, she stated that she wanted to be able to make an electronic request for such a fee waiver and that the LSS administrator would then provide an image of the document, in paper, microform, or electronically, to those who qualify. NRC representatives agreed to insert such language into this section, and stated that they would like to find a way for a potential party to apply for a single fee waiver that would apply throughout the pre- and post application period of LSS use.

EI representatives suggested, and the committee agreed, to strike paragraph (e) of section 2.1008, since an equivalent provision had not been included in other sections of the draft rule.

#### Section 2.1009 - Procedures

EEI representatives asked the NRC who would enforce this section. NRC responded that, other than the certification provision under paragraph (b), they did not envision any other enforcement provisions to ensure implementation of these procedures. They added, however, that the advisory review board proposed under section 2.1011(d)(11) could play a role in bringing matters related to compliance with the procedures listed in this section, which are procedures that largely internal to the organizations that are potential parties and parties. It was clarified that the certification provision that is envisioned in paragraph (b) would occur more than once during the pre- and post application periods.

#### Section 2.1010 - Pre-License Application Licensing Board

EEI representatives asked what section 2.704, as referenced in paragraph (a), had to do with the creation of the Pre-license Application Licensing Board (PALB). NRC representatives stated that this provision is referenced here in order to ensure that the PALB is constituted in the same manner that all NRC licensing boards are constituted.

EEI representatives also asked what the term "final determination" meant in paragraph (c) of this section. NRC responded that this was meant to imply a decision at the Commission level. The committee agreed to change the language of paragraph (c) to read: "Upon a final determination by the Commission that the material is not privileged, proprietary, safeguards information, or otherwise exempt from disclosure, the potential party who asserted the claim of withholding must submit the document to the LSS administrator within two days for entry into the (LSS)."

#### Section 2.1011 - LSS Administrator

DOE's spokesperson, in reiterating the agreements that he believed the committee had reached on the issue of LSS administration at the last meeting, stated that the committee had agreed that DOE would not be the administrator of the system, that the system would not be located in a DOE building, and that those components of the NRC that would be a party to the proceeding would also not be the system administrator. He noted that DOE is currently under contract with Science Applications International Corporation (SAIC) to design the system, that DOE will be procuring any equipment that will be necessary to operate the system, and that DOE will be the single largest user of the system. As a result, he stated that this section of the rule should make explicit DOE's "rights" with respect to the use of its portion of the LSS.

Furthermore, DOE's spokesperson suggested that the advisory review board called for in paragraph (d)(11) of this section should serve the same function that the technical work group serves to this committee. That is, this body would develop consensus agreements on issues related to the design, redesign and implementation of the technical aspects of the LSS, and the LSS administrator would simply implement these decisions.

Finally, DOE suggested that the word "procuring" as found in paragraph (d)(7) of this section should be stricken. He suggested that this task continue to be the responsibility of

DOE, including the need to redesign the system should this be necessary.

The committee agreed that DOE should develop revised language for this section of the draft rule that will accomplish their objectives, and that the committee would review this language at its next meeting.

NCAI's the representative of the expressed concerns with leaving the procurement of the system solely in the hands of DOE. DOE representatives responded that the system requirements that relate to procurement would be based on the LSS rule, including whatever functional requirements are agreed upon for the LSS administrator and advisory review board. The NRC spokesperson stated that federal automated data processing (ADP) procurement procedures are extremely complex and that it is very easy to get fouled up. He stated that he was concerned that they let those who have the expertise handle this, and that he was more than happy to let DOE take on this responsibility. Furthermore, he stated that buying the hardware was not, in his opinion, an important aspect of "system control," which is the major function of the LSS administrator.

Nevada representatives agreed to let DOE handle LSS procurement and stated that they would have to rely on the LSS compliance provisions and the "fortitude" of the LSS administrator to ensure that this is done properly. They added that if the system doesn't work, whether it is due to problems that are the result of federal ADP procurement procedures or any other reason, the licensing proceeding will simply revert to Subpart G.

In discussing DOE's proposal that the advisory review board be used a decision-making body with respect to technical issues related to the use and implementation of the LSS, the committee discussed the scope of issues that might be usefully addressed by such an entity. NRC representatives expressed concerns about such a body discussing issues that are related to the proceeding and any ex parte restrictions that would be placed on the NRC in this regard. Other committee members suggested that this body would not discuss substantive issues, related to the licensing proceeding, but procedural and enforcement issues related to the use and implementation of the LSS.

EI representatives asked what paragraph (d)(5) meant. NRC responded that it was meant to address the need for procedures that would protect the integrity of and provide a back-up to the data that has been entered into the LSS in the event of a system failure. It was agreed that NRC should revise the language used in this paragraph to make its intent more clear.

#### Section 2.1012 - Compliance

The spokesperson for the environmental coalition asked whether it would be possible for someone to participate as a potential party or party without using a computer. NRC representatives responded that the only way this would be possible is for the entity to gain access to the LSS (but only to headers and images) through the NRC and DOE public document rooms and to hire someone to put their documents into ASCII format to be entered into the LSS. The NRC spokesperson stated that he did not believe that owning a computer as a condition for effective

participation in the HLW licensing proceeding was a particularly onerous requirement.

The committee agreed to insert "substantially" preceding the word "complied with" in paragraph (a) of this section and to insert "substantial" preceding the word "compliance" in paragraph (b) of this section. In addition, the committee agreed to insert the words "with all applicable orders" following the word "compliance" in paragraph (c) of this section.

#### Section 2.1013 - Use of LSS During the Adjudicatory Proceeding

EI representatives suggested that paragraph (b) of this section specify the precise requirements with respect to the timing of entering "all exhibits tendered during the hearing" into the LSS "before the hearing commences." It was clarified that when an exhibit includes material that cannot be converted into an ASCII format, it will be captured in the LSS as an image as per section 2.1004 and 2.1011(d)(3).

Finally, it was agreed that the last sentence in paragraph (d) of this section should be changed to read: "Hard copy, and images thereof, will also be permitted for use by counsel and witnesses during the hearing."

#### Section 2.1014 - Intervention

The spokesperson for the environmental coalition asked whether there were any changes to the text used in this section of the draft rule from the text found in section 2.714 of Subpart G. NRC representatives responded that the difference between 2.714 and this section is that paragraphs (a)(2)(iv) and (v) have been added to this section to help guide the determination of the specificity of or basis for the petition to intervene. The environmental representative stated that she was concerned with the requirements set forth in (iv) because there might not be a document in the LSS which provides the basis for the contention that there was no support for a particular statement in the license application. NRC representatives stated that a petitioner could point to conclusions reached in documents that do not contain supporting documentation as a way to meet this requirement.

EI representatives questioned whether paragraph (c) was meant to provide affected states and tribes party status without having to show contentions. Nevada representatives stated that they would object to being forced to show contentions as part of a petition to intervene, but Nevada would be prepared to show contentions in some other way. Committee members agreed that this approach was consistent with the definition of "party" that had been discussed and agreed upon earlier in the meeting.

#### Section 2.1019(h)(2)(ii) - Exclusions

(Authors note: Based on the position taken by the representatives of the State of Nevada at the start of the meeting concerning what they were and were not prepared to discuss, the committee agreed to address one final substantive issue before adjourning. This issue can be found in the above referenced section of the draft rule.)

The committee agreed that the list of exclusions that is found in section 2.1019(h)(2)(ii) should be moved back to where

it was in the original April 8, 1988 "strawman" version of the draft rule. That is, it was agreed that the text which comprises the exclusions list should become section 2.1006, and all other section should be re-numbered accordingly.

The committee also agreed to add two items to the list of material that would be excluded from initial entry into the LSS, but subject to derivative discovery. These items included: 1) "marginalia," and 2) "other documents defined by screening criteria established by the Advisory Review Board." The latter item was added as a result of the suggestion from the Nevada representatives that "letters of transmittal" be added to the exclusions list, and concerns expressed by other committee members that it might be appropriate to include some "letters of transmittal" and to exclude others, thus, the need for screening criteria. It was also agreed that screening criteria might be necessary for other types of materials, thus the open ended nature of this provision.

#### NEXT STEPS

It was agreed that committee members that had volunteered to develop proposed revisions to the draft rule would submit these revisions to the NRC staff as soon as possible, and that the NRC staff would revise the entire draft on the basis of these proposed revisions and the discussion that took place at this meeting, with the target date for distributing the next version of the draft rule being the end of the month of April.

The facilitator indicated that even though the committee had not discussed the entire draft rule at this meeting, he felt that a number of significant tentative agreements had been reached, that the committee was making significant progress toward achieving its goal, and that the negotiations were generally about as far along as one could hope, given the volume and complexity of the draft rule being negotiated.

In discussing whether there might be a need for another meeting in light of the need for Nevada's representatives to obtain authority to discuss the remaining sections of the draft rule, DOE representatives suggested that the next meeting be rescheduled as a three-day meeting, and that the June meeting be used for substantive discussions, if need be, rather than being used to sign-off on a final agreement as was envisioned in the original schedule. If a third meeting proved necessary for purposes of signing-off on a final agreement, this could be scheduled at a later date. The NRC spokesperson stated that he was not prepared, at this juncture, to recommend to the Commission that the process be extended beyond its current schedule. Other committee members indicated that it would be very difficult for them to change their travel arrangements at this late date. Thus, the committee agreed that it would stick to its current schedule, using both of the two remaining two-day meetings, scheduled for May 18-19 and June 29-30, for substantive discussions. If a third meeting proved necessary for purposes of signing off on a final agreement, it could be scheduled at a later date.

public who wished to comment on the committee's deliberations. With no member of the public indicating their desire to do so, the meeting was adjourned.

APPENDIX 1

List of Attendees

Committee Members

Mike Baughman  
Lincoln County

Steve Bradhurst  
Nye County

Chip Cameron  
NRC

Barbara Cerny  
DOE

David Cross  
EEI

Jim Davenport  
State of Nevada

Stan Echols  
DOE

Robert Holten  
NCAI

Dixon Hoyle  
USCEA

Melinda Kassen  
Environmental Defense Fund

Mal Murphy  
State of Nevada

Bill Olmstead  
NRC

David Ortman  
Friends of the Earth

Gerry Saltzman  
DOE

Jay Silberg  
EEI

Harry Swainston  
State of Nevada

Stuart Treby  
NRC

Brooks Yeager  
Sierra Club

Facilitators

Howard Bellman  
Matt Low  
Tim Mealey

Members of the Public

Kirk Balcom  
State of Nevada

Carol Blackston  
DOE

Jim Bresee  
DOE

John H. Frye  
NRC

Donnie H. Grimsley  
NRC

Ken Kalman  
NRC

Christine Kohl  
NRC

Robert McPherson  
Weston

Neile Miller  
OMB

A.B. Muller  
SAIC

W. Richard Pierce  
SAIC

Thomas Scarbrough  
NRC

Betsy Shelburne  
NRC

Charles Smith  
DOE/OCRWM

Jona Souder  
NRC

Stephen H. Spector  
Center for Nuclear Waste

DRAFT RULE DISCUSSED AT MEETING

*April meeting*



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

APR 08 1988

TO: Members of the High-level Waste Licensing Support  
System Advisory Committee

FROM: Chip Cameron  
Office of General Counsel

*Chip Cameron*

SUBJECT: DRAFT TEXT OF THE LSS RULE

Enclosed is a draft text of a new Subpart J to 10 CFR Part 2. The new Subpart contains the procedure governing the high-level waste licensing proceeding, including provisions necessary to implement the use of the LSS in the proceeding. I have also enclosed a hearing schedule based on the draft rule, and a topical list to guide the selection of relevant documents for entry into the LSS. This list is an integration of the DOE, Nevada, and EDF lists (the excluded items on the lists have been set forth in the text of the rule). We would anticipate discussing both the schedule and the topical list in the Supplementary Information to the rule.

I have drafted this "strawman text," based on the discussions of the negotiating committee at its March, 1988 meeting in Reno, in order to provide a vehicle for further discussions of the negotiating committee. As such, it does not represent an NRC position on the issues addressed in the draft text, and the NRC will formulate specific positions on the text at its next negotiating team meeting in preparation for the forthcoming meeting of the negotiating committee.

## 10 CFR Part 2 - Subpart J

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#### 2.1000 Scope of Subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to section 2.101(f)(8) or section 2.105(a)(5) of this part. The procedures in this subpart take precedence over the 10 CFR Subpart G, rules of general applicability, except for the following provisions: 2.702, 2.703, 2.704, 2.707, 2.710, 2.711, 2.713, 2.715, 2.717, 2.718, 2.719, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.749, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.762, 2.763, 2.770, 2.771, 2.772, 2.780, 2.785, 2.786, 2.787, 2.788, and 2.790.

#### 2.1001 Definitions.

"ASC II File" means a text file stored on magnetic medium containing the ASCII codes which represent characters and symbols.

"bibliographic header" means the series of descriptive terms given to a document or to other material by the LSS Administrator.

"document" means any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic.

*Did Ed S. see this*

"draft" means an unfinished document circulated for external substantive review by the supervisor of the basic organizational unit (for example, the branch unit within the U.S. Nuclear Regulatory Commission), or any organizational units above that unit, of the party or potential participant. "Draft" does not include unfinished adjudicatory documents such as motions, replies, findings, briefs, and other pleadings, or Licensing Board, Appeal Board, and Commission orders and decisions.

"image" means the visual presentation of information either on a paper copy, microfiche, or a bit-map on optical disk.

*what number or words*

"marginalia" means handwritten, printed, or other types of notations made on a document.

"party" for purposes of this subpart means a person or group admitted, under section 2.1015 of this subpart, or a unit of government admitted under section 2.715(c) of this part, to the proceeding on an 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.

"potential participant" means any person or group who, during the period before the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area is submitted, is granted access to the Licensing Support System and who consents to comply with the regulations set forth in Subpart J of this part, including the jurisdiction of the Pre-License Application Licensing Board established pursuant to Section 2.1011 of this subpart.

"pre-license application phase" means the time period before the license application to receive and possess high-level radioactive waste at a geologic repository operations area is docketed under section 2.101(f)(3) of this part.

"preliminary draft" means any unfinished document that has not been circulated for external substantive review by the supervisor of the basic organizational unit, or of any organizational units above that unit, of the party or potential participant.

"record" means a document in the possession or control of, and associated with the business of, a party or potential participant. "Record" does not include personal records in the possession of individual personnel of a party or potential participant that were not required to be created or retained by the party or potential participant, and can be retained or discarded at the author's sole discretion, or documents of a personal nature that are not associated with any business of the party or potential participant.

*with list sent on 11/11/81*

"searchable full text" means the electronic indexed entry of a document in ASCII into the Licensing Support System that allows the identification of specific words or groups of words within a text file.

### 2.1002 High-Level Waste Licensing Support System.

The Licensing Support System is an electronic information management system containing the records, documents, and other data relevant to the issuance of a license for a geologic repository for the disposal of high-level radioactive

waste pursuant to Part 60 of this chapter. The Licensing Support System contains the relevant records, documents, and other data of the license applicant and all other parties to the high-level radioactive waste licensing proceeding. Access to the Licensing Support System by the parties and potential participants to the high-level radioactive waste licensing proceeding provides the document discovery in the proceeding. The Licensing Support System provides for the electronic transmission of filings by the parties during the high-level waste proceeding, and orders and decisions of the Commission and Commission adjudicatory boards related to the proceeding.

#### 2.1003 Scope of the Licensing Support System.

The Licensing Support System shall include all documentary material related to the licensing of the likely candidate site for a geologic repository pursuant to Part 60 of this chapter. Documentary material is any material or other information, not otherwise privileged and not excluded under section 2.1006 of this subpart, that is relevant to, or likely to lead to the discovery of information that is relevant to, the licensing of such a repository. The scope of documentary material shall be guided by the topical guidelines established by the regulatory language to be specified].

#### 2.1004 Submission of discoverable material.

(a) each potential participant or party shall submit to the LSS Administrator an ASCII file, an image, and a bibliographic header--

(1) for all documentary material, including drafts (as defined in section 2.1001 of this subpart) of final records, generated by, or at the direction of, that potential participant or party after the date on which such potential participant or party is given access to the Licensing Support System pursuant to section 2.1009 of this subpart.

(2) all documentary material generated by, or at the direction of, a potential participant or party before the date on which such potential participant or party was given access to the Licensing Support System pursuant to section 2.1009 of this subpart, and for which ASCII files are in the possession of such participant or party.

(b) each potential participant or party shall submit to the LSS Administrator an image, and a bibliographic header for all other documentary material that is within the topical guidelines established by the regulatory language to be specified].

(c) each potential participant or party shall submit a bibliographic header for all discoverable material that is not suitable for entry into the Licensing Support System in searchable full text. Such material includes raw data, computer runs, computer programs and codes, field notes, core samples, maps, photographs, U.S. Department of Energy or U.S. Nuclear Regulatory Commission vouchers for travel to the Yucca Mountain site in Nevada. In addition to the bibliographic header, an image shall also be submitted for maps, photographs, and other graphic material.

(d) each potential participant or party shall submit a bibliographic header for each document--

*within  
11/10/02  
personal mail  
or former*

- (1) for which a claim of privilege is asserted;
- (2) which constitutes confidential financial or commercial information;
- (3) which constitutes safeguards information under section 73.21 of this Chapter.

(e) in addition to the submission of records under paragraph (a) of this section, potential participants or parties may request that another potential participant's or party's records be entered into the Licensing Support System in searchable full text if they or the other potential participant or party intend to rely on such records during the licensing proceeding.

(f) Submission of ASCII files, images, and bibliographic headers shall be in accordance with criteria established by the LSS Administrator.

(g) Basic licensing documents generated by the U.S. Department of Energy, such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by the U.S. Nuclear Regulatory Commission, such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be submitted to the LSS Administrator by the respective agency which generated the document.

2.1005 Amendments and additions.

(a) Within five days after a document is entered into the Licensing Support System by the LSS Administrator, the potential participant or party shall verify that the document has been entered correctly, and shall notify the LSS Administrator of any errors in entry.

(b) After the time period specified for verification in paragraph (a) of this section has expired, a potential participant or party who desires to amend an alleged incorrect document, must enter the corrected version as a separate document. The LSS Administrator shall ensure that the original document specifies that a corrected version is also in the Licensing Support System.

(c) An updated revision of a document in the Licensing Support System must be entered as a separate document. The LSS Administrator shall ensure that the original document specifies that an updated version has also been entered into the Licensing Support System.

(d) Any document that has been incorrectly excluded from the Licensing Support System must be submitted to the LSS Administrator by the potential participant or party that generated the record within twenty-four hours after its exclusion has been identified.

2.1006 Exclusions.

The following material is excluded from entry into the LSS--

- (a) personal mail and other personal material;
- (b) official notice material, such as reference books and text books;

(c) material pertaining exclusively to administration, such as materials related to budgets, financial management, personnel, office space, or procurement, except for the Scope of Work on a procurement related to repository siting, construction, or operation, or the transportation of spent nuclear fuel or high-level waste;

(d) Press clippings and press releases;

(e) Speeches;

(f) U.S. Department of Energy and U.S. Nuclear Regulatory Commission travel vouchers other than for travel to the Yucca Mountain site in Nevada;

(g) Junk mail;

(h) References cited in contractor reports;

(i) Preliminary drafts.

#### 2.1007 Privilege.

(a) With the exception of the draft records covered by section 2.1004(a)(1) of this section, the traditional discovery privileges recognized in NRC adjudicatory proceedings pursuant to section 2.790 of this part, including the protection of confidential financial and commercial information, and safeguards information, will be available to potential participants and parties.

(b) Any document for which a claim of privilege is not upheld by the Pre-license Application Licensing Board shall be submitted by the party or potential participant that asserted the claim, to the LSS Administrator for entry into the Licensing Support System, either into an open access file, or into the Protective Order file if a Licensing Board so directs under section 2.1011(b)(4) or section 2.1017(f) of this subpart.

#### 2.1008 Public Access.

(a)(1) Terminals for access to those portions of the Licensing Support System comprised of U.S. Department of Energy records during the pre-license application phase, and microfiche of the non-privileged portions of those records, shall be provided at the headquarters of the U.S. Department of Energy, and at all U.S. Department of Energy Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository.

(2) Terminals for access to those portions of the Licensing Support System comprised of U.S. Nuclear Regulatory Commission records during the pre-license application phase, and microfiche of the non-privileged portions of those records, shall be provided at the headquarters of the U.S. Nuclear Regulatory Commission, and at all U.S. Nuclear Regulatory Commission Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the U.S. Nuclear Regulatory Commission Regional Offices, including the Uranium Recovery Field Office in Denver, Colorado.

*Administrative*

*Boehl*

(3) The access terminals specified in paragraphs (a)(1) and (a)(2) of this section shall include terminals at Las Vegas, Nevada; Reno, Nevada; and Carson City, Nevada.

(4) Public access to the Licensing Support System shall be provided by the LSS Administrator after a notice of hearing has been issued pursuant to section 2.101(f)(8) or section 2.105(a)(5) on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area.

*only after hearing*

(b) Hard copy availability of the records specified in paragraph (a) of this section, as well as duplication fees, and fee waiver for those records, will be governed by the Freedom of Information Act regulations of the respective agencies.

2.1009 Potential participants.

(a) A person or group may petition the Pre-license Application Licensing Board established pursuant to section 2.1011 of this subpart for access to the Licensing Support System.

(b) The Pre-License Application Licensing Board shall, in ruling on a petition for access, consider the factors set out in paragraph (c) of section 2.1015 of this subpart.

(c) Any person or group whose petition for access is approved pursuant to paragraph (b) of this section shall comply with the regulations set forth in this subpart, including section 2.1004, and agree to comply with the orders of the Pre-License Application Licensing Board established pursuant to section 2.1011 of this subpart.

(d) The participation of the State of Nevada in the Licensing Support System during the pre-license application phase shall not have any affect on the State's exercise of it's disapproval rights under Section 115 of the Nuclear Waste Policy Act, as amended, 41 U.S.C. 10135.

2.1010 Procedures.

(a) Each potential participant or party shall--

- (1) Designate an official who will be responsible for administration of its Licensing Support System responsibilities;
- (2) Establish procedures to implement the requirements in section 2.1004 of this subpart;
- (3) Provide training to its staff on the procedures for implementation of Licensing Support System responsibilities;
- (4) Ensure that all documents carry a LSS identification number;
- (5) Cooperate with the advisory review process established by the LSS Administrator pursuant to section 2.1012(d)(11) of this subpart.

(b) The responsible official designated pursuant to subsection (a)(2) of this section shall certify to the LSS Administrator that the procedures specified in subsection (a)(1) of this section have been implemented, and that to the best

of his or her knowledge, all discoverable material has been identified and submitted to the Licensing Support System.

2.1011 Pre-License Application Licensing Board.

(a) a Pre-License Application Licensing Board designated according to section 2.704 of this part shall rule on all petitions for access to the Licensing Support System submitted under section 2.1009(a) of this subpart and on all disputes over the entry of documents during the pre-license application phase, including disputes relating to relevance and privilege.

(b) The Board shall rule on any claim of document withholding to determine--

(1) whether the material is privileged or confidential commercial or financial information under section 2.790 of this part, or is safeguards information under section 73.21 of this chapter;

(2) if, privileged, whether it is an absolute or qualified privilege;

(3) if qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding.

(4) whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of non-disclosure) as may be necessary and appropriate to limit the disclosure to potential participants, and parties in the proceeding, and to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, is received and possessed by a party other than the Commission staff, it shall also be protected according to the requirements of section 73.21 of this chapter. The presiding officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the presiding officer for violation of an order issued pursuant to this paragraph, violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act, as amended, may be subject to a civil penalty imposed pursuant to section 2.205 of this part. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed an order issued under section 161b of the Atomic Energy Act.

(c) Board determinations may be appealed to an Atomic Safety and Licensing Appeal Board under section 2.785 of this part, and to the Commission under section 2.786 of this part.

(d) Upon a final determination that the material is not privileged, proprietary, or safeguards information, the potential participant who asserted the claim of withholding must submit the document to the LSS Administrator within twenty-four hours for entry to the Licensing Support System.

(e) The filing of pleadings, orders, and decisions shall be made according to the procedures specified in section 2.1014(c) of this subpart.

#### 2.1012 LSS Administrator.

(a) The Licensing Support System will be administered by the U.S. Nuclear Regulatory Commission.

(b) Responsibility within the Commission for the administration of the Licensing Support System shall not be assigned to any organizational unit that represents the U.S. Nuclear Regulatory Commission staff as a party to the proceeding.

(c) Licensing Support System data shall not be stored in any computer system that is controlled by the U.S. Department of Energy or its contractors, or is physically located on the environs of any U.S. Department of Energy building or facility, or that of its contractors.

(d) The LSS Administrator is responsible for the management of the Licensing Support System. Such responsibilities include--

(1) the receipt and entry of the documentary material specified in section 2.1004(a) and sections 2.1004(a) and (e) of this subpart, into the Licensing Support System in searchable full text;

(2) the receipt and entry of the bibliographic headers specified in sections 2.1004(a), (b), (c), and (d) of this subpart into the Licensing Support System in searchable full text;

(3) the receipt and entry of images of all documentary material specified in sections 2.1004(a), (b), and (c) into the Licensing Support System;

(4) establishing format standards for the submission of ASCII files, bibliographic headers, and images;

(5) establishing back-up for Licensing Support System documents and images;

(6) Establishing and maintaining security for the Licensing Support System data base;

(7) Procuring, distributing, and maintaining appropriate software;

(8) Establishing the procedures and standards for the electronic transmission of filings, orders, and decisions during the pre-license application phase and the high-level waste licensing proceeding, including the assignment of user password security codes;

(9) establishing and maintaining a thesaurus and authority tables for the Licensing Support System;

(10) Establishing and implementing a training program for Licensing Support System by potential users;

(11) Establishing an advisory review board of Licensing Support System users to periodically evaluate the implementation of the Licensing Support System, including the identification of generic problems, and problems related to implementation by a specific participant; and

(11) Other duties as specified in this part.

#### 2.1013 Compliance.

(a) In addition to the requirements of section 2.101(f)(3) of this part, the Director of the U.S. Nuclear Regulatory Commission's Office of Nuclear Materials Safety and Safeguards may determine that the tendered application is incomplete, and therefore not acceptable for docketing, if the license applicant has not complied with section 2.1004 of this part.

(b) A person or group including potential participants granted access to the Licensing Support System under section 2.1009 of this subpart, shall not be granted party status under section 2.1015 of this part, or status as an interested governmental participant under section 2.715(c) of this part, if they cannot demonstrate compliance with the requirements of section 2.1004 of this subpart at the time they request participation in the high-level waste licensing proceeding under either section 2.1015 or section 2.715(c) of this part.

(c) The Licensing Board established for the high-level waste licensing proceeding shall not make a finding of compliance pursuant to paragraph (b) of this subpart for any person or group who is not in compliance with all orders of the Pre-License Application Licensing Board established pursuant to section 2.1015 of this subpart.

2.1014: Use at hearing.

(a)(1) Pursuant to section 2.702, the Secretary will maintain a hard copy docket of the proceeding on the application for a license to receive and possess waste at a geologic repository operations area.

(2) Commencing with the filing of the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, the LSS Administrator shall establish a file within the Licensing Support System to contain a copy of the official record materials of the high-level radioactive waste licensing proceeding, such as the license application; motions, replies, proposed findings, briefs, and other pleadings of the parties; Licensing Board, Appeal Board, and Commission orders and decisions issued in the proceeding; transcripts of pre-hearing conferences, the hearing, and oral arguments; and exhibits identified for the record at hearing.

(b) The official record file in the Licensing Support System will contain a list of all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. Transcripts and exhibits will be entered into the Licensing Support System by the LSS Administrator on a daily basis in order to provide next-day availability at the hearing.

(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 pursuant to Part 60 of this chapter, shall be transmitted electronically by the submitter to the board(s), parties, and the Secretary, according to format requirements established by the LSS Administrator. Parties will be required to use a password security code for the electronic transmission of these documents.

(2) Any filing required to be served upon a party shall be served upon him or upon the representative designated by him or by law to receive service of papers. When a party has appeared by attorney, service must be made upon the attorney of record.

(3) Service upon a party is complete when the sender receives electronic acknowledgment (delivery receipt) that the electronic submission has been placed in the receiving party's electronic mailbox.

(4) Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by--

- (i) electronic acknowledgment of the party served or his counsel;
- (ii) the affidavit of the party making the service;
- (iii) the certificate of counsel if he has made the service.

(5) One hard copy of each filing shall be served promptly on the Secretary by regular mail.

(6) All Board and Commission issuances and orders will be transmitted electronically to the parties.

(d) Online access to the Licensing Support System, including the Protective Order File as appropriate, shall be provided to the board(s), the representatives of the parties, and the witnesses while testifying, for use during the hearing. Use of hard copy, and images thereof, will also be permitted during the hearing.

#### 2.1015 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding on the 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 who desires to participate as a party shall file a written petition for leave to intervene. In a proceeding noticed pursuant to section 2.105 of this part, any person whose interest may be affected may also request a hearing. The petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request. Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (a)(2) and paragraph (c) of this section:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

(2) The petition shall set forth with particularity--

(i) the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (c) of this section;

(ii) the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene;

(iii) a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity;

(iv) reference to the specific documents in the Licensing Support System that provide a basis for the contention; and

(v) the specific regulatory or statutory requirement that needs to be satisfied.

(3) Any person who has been admitted as a party pursuant to this section may amend his petition for leave to intervene with respect to the contentions specified in paragraph (a)(2)(iii) of this section. Petitions to amend may be made no later than thirty days after the issuance of the Safety Evaluation Report issued by the NRC staff. The presiding officer shall rule on the petition based on a balancing of the factors specified in paragraph (a)(1) of this section.

(b) Any party to the proceeding may file an answer to a petition for leave to intervene within twenty days after service of the petition, with particular reference to the factors set forth in paragraph (c) of this section.

(c) The Commission, the presiding officer, or the atomic safety and licensing board designated to rule on petitions to intervene and/or requests for hearing shall permit intervention, in any hearing on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area, by the State in which such area is located and by any affected Indian Tribe as defined in Part 60 of this chapter. In all other circumstances, such ruling body or officer shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

(1) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(d) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, presiding officer or the designated atomic safety and licensing board may direct in the interests of:

(1) Restricting irrelevant, duplicative, or repetitive evidence and argument,

(2) Having common interests represented by a spokesman, and

(3) Retaining authority to determine priorities and control the compass of the hearing.

(e) In any case in which, after consideration of the factors set forth in paragraph (c) of this section, the Commission or the presiding officer finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention shall limit his participation accordingly.

(f) A person permitted to intervene becomes a party to the proceeding, subject to any limitations imposed pursuant to paragraph (e) of this section.

(g) Unless otherwise expressly provided in the order allowing intervention, the granting of a petition for leave to intervene does not change or enlarge the issues specified in the notice of hearing.

2.1016 Appeals from certain rulings on petitions for leave to intervene and/or requests for hearing.

(a) Notwithstanding the provisions of section 2.1017(f), an order of the presiding officer or the atomic safety and licensing board designated to rule on petitions for leave to intervene and/or requests for hearing, including those parts of the order dealing with contentions, must be appealed, in accordance with the provisions of this section, to the Atomic Safety and Licensing Appeal Board within ten (10) days after service of the order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any other party may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal. No other appeals from rulings on petitions and/or requests for hearing shall be allowed.

(b) An order wholly denying a petition for leave to intervene and/or request for a hearing, including those parts of the order dealing with contentions, is appealable by the petitioner on the question whether the petition and/or hearing request should have been granted in whole or in part.

(c) An order granting a petition for leave to intervene and/or request for a hearing, including those parts of the order dealing with contentions, is appealable by a party other than the petitioner on the question whether the petition and/or the request for a hearing should have been wholly denied.

2.1017 Motions.

(a) Presentation and disposition. All motions shall be addressed to the Commission or, when a proceeding is pending before a presiding officer, to the presiding officer. All motions, unless made orally on the record during a hearing, shall be filed according to the provisions of section 2.1014(c) of this subpart.

(b) Content. A motion shall state with particularity the grounds and the relief sought, and shall be accompanied by any affidavits or other evidence relied on, and, as appropriate, a proposed form of order.

(c) Answers to motions. Within ten (10) days after service of a motion a party may file an answer in support of or in opposition to the motion, accompanied by affidavits or other evidence. The moving party shall have no right to reply, except as permitted by the presiding officer or the Secretary or the Assistant Secretary.

(d) Oral arguments; briefs. No oral argument will be heard on a motion unless the presiding officer or the Commission directs otherwise. A brief may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on.

(e) The Board may dispose of motions either by order or by ruling orally during the course of a prehearing conference or hearing. The Board should ensure that parties not present for the oral ruling are notified promptly of the order.

(f) Interlocutory appeals to the Commission. No interlocutory appeal may be taken to the Commission from a ruling of the presiding officer. When in the judgment of the presiding officer prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, the presiding officer may refer the ruling promptly to the Commission, and notify the parties either by announcement on the record or by notice if the hearing is not in session.

(g) Effect of filing a motion or certification of question to the Commission. Unless otherwise ordered, neither the filing of a motion nor the certification of a question to the Commission shall stay the proceeding or extend the time for the performance of any act.

(h) Where the motion in question is a motion to compel discovery under Section 2.720(h)(2) or section 2.1017(f), parties may file answers to the motion pursuant to paragraph (c) of this section. The presiding officer in his or her discretion, may order that the answer be given orally during a telephone conference or other prehearing conference, rather than filed electronically. If responses are given over the telephone the presiding officer shall issue a written order on the motion which summarizes the views presented by the parties. This does not preclude the presiding officer from issuing a prior oral ruling on the matter which is effective at the time of such ruling, provided that the terms of the ruling are incorporated in the subsequent written order.

2.1018 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her, one day shall be added to the prescribed period.

2.1017 Discovery.

(a) Discovery methods. Parties to the high-level waste licensing proceeding may obtain discovery by one or more of the following methods: Access to the discoverable material in the Licensing Support System submitted pursuant to section 2.1004 of this subpart; Depositions upon oral examination or written questions pursuant to section 2.1008 of this subpart; and requests for admission pursuant to section 2.1009 of this subpart.

(b) Scope of discovery. (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the licensing of the likely candidate site for a geologic repository, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party either through access to the Licensing Support System or by deposition. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Trial preparation materials. A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of this case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

(c) Protective order. Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) That the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be

had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the presiding officer; (6) that, subject to the provisions of section 2.790 of this part, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (7) that studies and evaluations not be prepared. If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(d) Sequence and timing of discovery. Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of responses. A party who has included all documentary material relevant to any discovery request in the Licensing Support System or who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which (i) he knows that the response was incorrect when made, or (ii) he knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the presiding officer or agreement of the parties.

(f) Motion to compel discovery. (1) If a deponent or a party upon whom a request for production of documents is served fails to respond or objects to the request, or any part thereof, the deposing party or the party submitting the request may move the presiding officer, within ten (10) days after the date of the response or after failure of a party to respond to the request for an order compelling a response in accordance with the request. The motion shall set forth the nature of the questions or the request, the response or objection of the party upon whom the request was served, and arguments in support of the motion. For purposes of this paragraph, an evasive or incomplete answer or response shall be treated as a failure to answer or respond. Failure to answer or respond shall not be excused on the ground that the discovery sought is objectionable unless the person or party failing to answer or respond has applied for a protective order pursuant to paragraph (c) of this section.

(2) In ruling on a motion made pursuant to this section, the presiding officer may make such a protective order as he is authorized to make on a motion made pursuant to paragraph (c) of this section.

(3) This section does not preclude an independent request for issuance of a subpoena directed to a person not a party for production of documents. This section does not apply to requests for the testimony of the regulatory staff pursuant to section 2.720(h)(2)(i) of this part.

2.1018 Depositions upon oral examination and upon written questions.

(a) Any party desiring to take the testimony of any party or other person by deposition on oral examination or written questions shall, without leave of the Commission or the presiding officer, give reasonable notice in writing to every other party, to the person to be examined and to the presiding officer of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or if, the name is not known, a general description sufficient to identify him or the class or group to which he belongs; the matters upon which each person will be examined and the name or descriptive title and address of the officer before whom the deposition is to be taken.

(b) Within the United States, a deposition may be taken before any officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Outside of the United States, a deposition may be taken before a secretary of an embassy or legation, a consul general, vice consul or consular agent of the United States, or a person authorized to administer oaths designated by the Commission.

(c) The deponent shall be sworn or shall affirm before any questions are put to him. Examination and cross-examination shall proceed as at a hearing. Each question propounded shall be recorded and the answer taken down in the words of the witness. Objections on questions of evidence shall be noted in short form without the arguments. The officer shall not decide on the competency, materiality, or relevancy of evidence but shall record the evidence subject to objection. Objections on questions of evidence not made before the officer shall not be deemed waived unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless he is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly forward the deposition by registered mail to the Commission.

(e) Where the deposition is to be taken on written questions, the party taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they

are to be taken. Within ten (10) days after service, any other party may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and filed as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party, any other party may introduce any other parts. A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.

(g) A deponent whose deposition is taken and the officer taking a deposition shall be entitled to the same fees as are paid for like services in the district courts of the United States, to be paid by the party at whose instance the deposition is taken.

(h) The witness may be accompanied, represented, and advised by legal counsel.

(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an index of all documents in his or her possession, relevant to the subject matter of the deposition, including personal records, marginalia, and preliminary drafts, to all parties. The index shall identify those records which have already been entered into the Licensing Support System. All documents that are not identical to documents already on the Licensing Support System, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) Any party may request a hard copy of any or all of the documents on the index that have not already been entered into the Licensing Support System.

(3) The deponent shall bring a hard copy of all documents on the index that have not already been entered into the Licensing Support System to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(4) A party may request that any or all documents on the index that have not already been entered into the Licensing Support System, and on which they intend to rely at hearing, be entered into the LSS.

(j) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the presiding officer, by subpoena or otherwise: Provided, That the presiding officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not

known to the witnesses made available by the Executive Director for Operations require the attendance and testimony of named NRC personnel.

2.1021 First Prehearing conference.

(a) In any proceeding involving an 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 the Commission or the presiding officer will direct the parties and any petitioners for intervention, or their counsel, to appear at a specified time and place, within seventy days after the notice of hearing is published, or such other time as the Commission or the presiding officer may deem appropriate, for a conference to:

- (1) Permit identification of the key issues in the proceeding;
- (2) Take any steps necessary for further identification of the issues;
- (3) Consider all intervention petitions to allow the presiding officer to make such preliminary or final determination as to the parties to the proceeding, as may be appropriate; and
- (4) Establish a schedule for further actions in the proceeding.

(b) The presiding officer may order any further informal conferences among the parties, including telephone conferences, to the extent that he considers that such a conference would expedite the proceeding.

(c) A prehearing conference held pursuant to this section shall be stenographically reported.

(d) The presiding officer shall enter an order which recites the action taken at the conference, the schedule for further actions in the proceeding, any agreements by the parties, and which identifies the key issues in the proceeding, makes a preliminary or final determination as to the parties in the proceeding, and provides for the submission of status reports on discovery.

2.1022 Second Prehearing Conference.

(a) The Commission or the presiding officer in a proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall direct the parties or their counsel to appear at a specified time and place within seventy days after the Safety Evaluation Review is issued by the NRC staff for a conference to consider:

- (1) Consideration of new or amended contentions submitted under section 2.1015(c) of this subpart;
- (2) Simplification, clarification, and specification of the issues;
- (3) The necessity or desirability of amending the pleadings;

(4) The obtaining of stipulations and admissions of fact and of the contents and authenticity of documents to avoid unnecessary proof;

(5) Identification of witnesses and the limitation of the number of expert witnesses, and other steps to expedite the presentation of evidence;

(6) The setting of a hearing schedule; and

(7) Such other matters as may aid in the orderly disposition of the proceeding.

(b) Prehearing conferences shall be stenographically reported.

(c) The presiding officer shall enter an order which recites the action taken at the conference, the amendments allowed to the pleadings and agreements by the parties, and which limits the issues or defines the matters in controversy to be determined in the proceeding.

#### 2.1023 Immediate effectiveness of initial decision.

(a) Except as provided in paragraph (c) of this section, or as otherwise ordered by the Commission in special circumstances, an initial decision directing the issuance or amendment of a construction authorization pursuant to section 60.31 of this chapter shall be effective immediately upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective, subject to the review thereof and further decision by the Commission upon notice of appeal filed by any party pursuant to Section 2.762 of this part or upon its own motion.

(b) Except as provided in paragraph (c) of this section, or as otherwise ordered by the Commission in special circumstances, the Director of Nuclear Material Safety and Safeguards, notwithstanding the filing of a notice of appeal, shall issue a construction authorization pursuant to section 60.31 of this chapter, or amendments thereto, authorized by an initial decision, within ten (10) days from the date of issuance of the decision.

(c) Commission. (1) Reserving the power to step in at an earlier time, the Commission will, upon receipt of the Licensing Board decision authorizing issuance of a construction authorization pursuant to section 60.31 of this chapter, review the matter on its own motion to determine whether to stay the effectiveness of the decision. A construction authorization decision will be stayed by the Commission, if it determines that it is in the public interest to do so, based on a consideration of the gravity of the substantive issue, the likelihood that it has been resolved incorrectly below, the degree to which correct resolution of the issue would be prejudiced by construction pending review, and other relevant public interest factors.

(2) The parties may file brief comments with the Commission pointing out matters which, in their view, pertain to the immediate effectiveness issue. To be considered, such comments must be received within 10 days of the Board decision. However, the Commission may dispense with comments by so

advising the parties. No extensive stay shall be issued without giving the affected parties an opportunity to be heard.

(3) The Commission intends to issue a stay decision within 30 days of receipt of the Licensing Board's decision. The Licensing Board's initial decision will be considered stayed pending the Commission's decision.

(4) In announcing a stay decision, the Commission may allow the proceeding to run its ordinary course or give instructions as to the future handling of the proceeding (for example, it may direct the Appeal Board to review the merits of particular issues in expedited fashion; furnish policy guidance with respect to particular issues; or decide to review the merits of particular issues itself, bypassing the Appeal Board). Furthermore, the Commission may in a particular case determine that compliance with existing regulations and policies may not longer be sufficient to warrant approval of a license application and may alter those regulations and policies.

(d) Unless the Commission otherwise explicitly so directs in its immediate effectiveness determination, no comment made in the course of the opinion or statement reflecting that determination is to be given any weight by the Atomic Safety and Licensing Appeal Board in its consideration of an appeal on the merits pursuant to Sections 2.762 and 2.785 of this part, or in any subsequent formal adjudication. The Commission's effectiveness determination is entirely without prejudice to such consideration in subsequent proceedings.

#### CONFORMING AMENDMENTS

2.700 is amended by adding:

The procedure applicable to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area are set forth in subpart J of this part.

2.714 is amended by deleting paragraph (d).

2.743(f) is amended by adding:

Exhibits in the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area are governed by section 2.1014 of this part.

2.764 is amended by deleting paragraph (d).

## SCHEDULE - HLW LICENSING PROCEEDING

Day 0	Notice of hearing - 2.101(f)(8)
Day 30	Answer - requests for intervention and contentions - 2.1015
Day 50	Replies to answer -2.1015
Day 70	First Pre-hearing conference - 2.1021
Day 100	First Pre-hearing conference order on intervention, contentions, consolidation of parties, schedule -2.1021
Day 110	Appeal of order - 2.1016
Day 120	Answers to appeal of order - 2.1016
Day 165	Decision by Appeal Panel - 2.1016
Day 165	Depositions - 2.1020 Motions to compel - 2.1019 Response to motions - 2.1017 Board rulings on discovery - 2.1019 Response to Board rulings
Day 500	Request for admissions - 2.742
Day 510	Answer - 2.742
Day 548	Staff review complete
Day 578	Requests for new or amended contentions - 2.1015
Day 598	Answer - 2.1015
Day 618	Second Pre-hearing conference - 2.1022
Day 648	Second order - 2.1022
Day 668	Motions for summary disposition - 2.749
Day 698	Answer - 2.749
Day 703	Rulings on summary disposition -2.749
Day 718	File written testimony -2.743(b)
Day 733	First day of hearing
Day 793	Last day of hearing

Day 823 Applicants proposed findings - 2.754  
Day 833 Other parties proposed findings - 2.754  
Day 843 NRC staff proposed findings - 2.754  
Day 848 Applicants reply - 2.754  
Day 908 Initial decision - 2.760  
Day 918 Comments from parties on whether the  
Commission should issue a stay of the  
initial decision - 2.1023  
Day 938 Commission decision on stay - 2.1023  
Elapsed time - 31.26 months  
Day 923 Notice of appeal - 2.762 (fifteen days after initial  
decision)  
Day 953 Appellants brief  
Day 988 Response Briefs  
Day 1018 Oral argument - 2.763  
Day 1078 Decision on appeal - 2.785  
Day 1098 Petition for Commission review - 2.786  
Day 1113 Answers opposing Commission review - 2.786  
Day 1143 Commission decision. - 2.786  
Elapsed time - 38.1 months

## TOPICAL GUIDELINES ON THE SCOPE OF DISCOVERABLE MATERIALS FOR ENTRY INTO THE LICENSING SUPPORT SYSTEM

### I. CATEGORIES OF DOCUMENTS

- Technical reports and analyses including those developed by contractors
- QA/QC records including qualification and training records
- External correspondence
- Internal memoranda
- Meeting minutes, including DOE/NRC meetings, Commission meetings
- Drafts (i.e., those submitted for decision beyond the first level of management or similar criterion)
- Congressional Q's & A's
- "Regulatory" documents related to HLW site selection and licensing, such as:
  - Draft and final environmental assessments
  - Site Characterization Plans
  - Site Characterization progress reports
  - Issue resolution reports
  - Rulemakings
  - Public and agency comments on documents
  - Response to public comments
  - Environmental Impact Statement, Comment Response Document, and related references
  - License Application (LA), LA data base, and related references
  - Topical reports, data, and data analysis
  - Recommendation Report to President
  - Notice of Disapproval, if submitted

### II. GENERAL TOPICS

1. Any document pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, proximity to components of the National Park System, the National Wildlife Refuge System, the National Wildlife and Scenic River System, the National Wilderness Preservation System, or National Forest Lands, proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored, spent fuel and nuclear waste transportation, safety factors involved in moving spent fuel or nuclear waste

to a repository, the cost and impact of transporting spent fuel and nuclear waste to a repository site, the advantages of regional distribution in siting of repositories, and various geologic media in which sites for repositories may be located.

2. Any document related to repository siting, construction, or operation, or the transportation of spent nuclear fuel and high-level nuclear waste, not categorized as an "excluded document", generated by or in the possession of any contractor of the Department of Energy, the Nuclear Regulatory Commission, or any other party to the HLW licensing proceeding.

3. All documents related to the physical attributes of the Basin and Range Province of the continental United States.

4. Any document listing and/or considering any site or location other than Yucca Mountain as a possible location for a high-level nuclear waste repository, or any alternative technology to deep geologic disposal.

5. Any document analyzing the effect of the development of a repository at Yucca Mountain on the rights of users of water in the Armagosa ground-water basin in Nevada.

6. Any document analyzing the health and safety implications to the people and environment of the transportation of spent fuel between locations where spent fuel is generated and Yucca Mountain, Nevada, or any other site nominated for repository characterization on May 28, 1986, including, but not limited to:

a. Any analysis of possible human error in the manufacture of spent fuel casks;

b. Any analysis of the actual population density along all of any specific projected routes of travel;

c. Any analysis of releases from any actual radioactive material transportation incidents;

d. Any analysis of the emergency response time in any actual radioactive materials transportation incident;

e. Any actual accident data on any specific projected routes of travel;

f. Any calculations or projections of the probabilities of accidents on any specific projected routes of travel;

g. Any data on the physical properties or containment capabilities of spent fuel casks which have been used or which are projected to be used at any hypothetical or actual projected repository;

h. Any analysis of modeling of the containment capabilities of spent fuel casks under a stress scenario;

i. Any analysis or comparison of spent fuel casks projected to be used against the spent fuel cask certification standards of the Nuclear Regulatory Commission;

j. Any analysis of the containment capabilities of spent fuel casks containing spent fuel which has been burned up over an extended period.

7. Any document analyzing or comparing Yucca Mountain, Nevada with any other site in the same "geohydrologic setting".

8. Any document relating to potential interference or incompatibility between a Yucca Mountain, Nevada, high-level nuclear waste repository and atomic energy defense activities at the Nevada Test Site.

9. Any document related to the land status, use or ownership of Yucca Mountain, Nevada.

10. Any document considering or analyzing the attributes or detriments of any engineered barrier upon the radioisotope isolation capability of Yucca Mountain, Nevada, or any other site considered.

11. Any document evaluating the effect of extended fuel burn-up on Yucca Mountain, Nevada's adequacy as a repository site for disposal of spent fuel or upon the design of any such theoretical repository.

12. Any document analyzing or investigating the potential for discharge of radionuclides into the Death Valley National Monument.

13. Any document analyzing the recharge of the underlying saturated zone or the hydroconductivity of the unsaturated zone at Yucca Mountain.

14. Any document containing any data or analysis of volcanic action in the volcanic system of which Yucca Mountain is a part.

15. Any document containing any data or analysis of events of tectonic faulting at Yucca Mountain, either at or beneath the surface of the ground, in tuffaceous rock generally, or in the volcanic system of which Yucca Mountain is a part.

16. Any document containing instructions or other limitations on the scope of work to be performed by Department of Energy personnel or contractors' personnel.

17. Any document pertaining to prevention or control of human intrusion at the Yucca Mountain site.

### III. SPECIFIC TOPICS

#### 1. The Site

A. LOCATION, GENERAL APPEARANCE AND TERRAIN, AND PRESENT USE

#### B. GEOLOGIC CONDITIONS

1. Stratigraphy and volcanic history of the Yucca Mountain area
  - a. Caldera evolution and genesis of ash flows
  - b. Timber Mountain Tuff
  - c. Paintbrush Tuff
  - d. Tuffaceous beds of Calico Hills
  - e. Crater Flat Tuff
  - f. Older tuffs
2. Structure
3. Seismicity
4. Energy and mineral resources
  - a. Energy resources
  - b. Metals
  - c. Nonmetals

#### C. HYDROLOGIC CONDITIONS

1. Surface water
2. Ground water
  - a. Ground water movement
  - b. Ground water quality
3. Present and projected water use in the area

#### D. ENVIRONMENTAL SETTING

1. Land use
  - a. Federal use
  - b. Agricultural
    - i. Grazing land
    - ii. Cropland
  - c. Mining
  - d. Recreation
  - e. Private and commercial development

2. Terrestrial and aquatic ecosystems
    - a. Terrestrial vegetation
      - i. Larrea-Ambrosia
      - ii. Larrea-Ephedra or Larrea-Lycium
      - iii. Coleogyne
      - iv. Mixed transition
      - v. Grassland-burn site
    - b. Terrestrial wildlife
      - i. Mammals
      - ii. Birds
      - iii. Reptiles
    - c. Special-interest species
    - d. Aquatic ecosystems
  3. Air quality and weather conditions: Air quality
  4. Noise
  5. Aesthetic resources
  6. Archaeological, cultural, and historical resources
  7. Radiological background
    - a. Monitoring program
    - b. Dose assessment
- E. TRANSPORTATION
1. Highway infrastructure and current use
  2. Railroad infrastructure and current use
- F. SOCIOECONOMIC CONDITIONS
1. Economic conditions
    - a. Nye County
    - b. Clark County
    - c. Methodology
  2. Population density and distribution
    - a. Populations of the State of Nevada
    - b. Population of Nye County
    - c. Population of Clark County
  3. Community services
    - a. Housing
    - b. Education
    - c. Water supply
    - d. Waste-water treatment
    - e. Solid waste
    - f. Energy utilities
    - g. Public safety services
    - h. Medical and social services
    - i. Library facilities
    - j. Parks and recreation

4. Social conditions
    - a. Existing social organization and social structure
      - i. Rural social organization and structure
      - ii. Social organization and structure in urban Clark County
    - b. Culture and lifestyle
      - i. Rural culture
      - ii. Urban culture
    - c. Community attributes
    - d. Attitudes and perceptions toward the repository
  5. Fiscal and governmental structure
2. Expected Effects of the Site Characterization Activities
    - A. SITE CHARACTERIZATION ACTIVITIES
      1. Field studies
        - a. Exploratory drilling
        - b. Geophysical surveys
        - c. Geologic mapping
        - d. Standard operating practices for reclamation of areas disturbed by field studies
      2. Exploratory shaft facility
        - a. Surface facilities
        - b. Exploratory shaft and underground workings
        - c. Secondary egress shaft
        - d. Exploratory shaft testing program
        - e. Final disposition
        - f. Standard operating practices that would minimize potential environmental damage
      3. Other studies
        - a. Geodetic surveys
        - b. Horizontal core drilling
        - c. Studies of past hydrologic conditions
        - d. Studies of tectonics, seismicity, and volcanism
        - e. Studies of seismicity induced by weapons testing
        - f. Field experiments in G-Tunnel facilities
        - g. Laboratory studies
    - B. EXPECTED EFFECTS OF SITE CHARACTERIZATION
      1. Expected effects on the environment
        - a. Geology, hydrology, land use and surface soils
          - i. Geology
          - ii. Hydrology
          - iii. Land use
          - iv. Surface soils
        - b. Ecosystems
        - c. Air quality

- d. Noise
- e. Aesthetics
- f. Archaeological, cultural, and historical resources
- 2. Socioeconomic and transportation conditions
  - a. Economic conditions
    - i. Employment
    - ii. Materials
  - b. Population density and distribution
  - c. Community services
  - d. Social conditions
  - e. Fiscal and governmental structure
  - f. Transportation
- 3. Worker safety
- 4. Irreversible and irretrievable commitment of resources

### C. ALTERNATIVE SITE CHARACTERIZATION ACTIVITIES

#### 3. Regional and Local Effects of Locating a Repository at the Site

##### A. THE REPOSITORY

- 1. Construction
  - a. The surface facilities
  - b. Access to the subsurface
  - c. The subsurface facilities
  - d. Other construction
    - i. Access route
    - ii. Railroad
    - iii. Mined rock handling and storage facilities
    - iv. Shafts and other facilities
- 2. Operations
  - a. Emplacement phase
    - i. Waste receipt
    - ii. Waste emplacement
  - b. Caretaker phase
- 3. Retrievability
- 4. Decommissioning and closure
- 5. Schedule and labor force
- 6. Material and resource requirements

##### B. EXPECTED EFFECTS ON THE PHYSICAL ENVIRONMENT

- 1. Geologic impacts
- 2. Hydrologic impacts
- 3. Land use
- 4. Ecosystems
- 5. Air quality
  - a. Ambient air-quality regulations
  - b. Construction
  - c. Operations
  - d. Decommissioning and closure

6. Noise
    - a. Construction
    - b. Operations
    - c. Decommissioning and closure
  7. Aesthetic resources
  8. Archaeological, cultural, and historical resources
  9. Radiological effects
    - a. Construction
    - b. Operation
      - i. Worker exposure during normal operation
      - ii. Public exposure during normal operation
      - iii. Accidental exposure during operation
- C. EXPECTED EFFECTS OF TRANSPORTATION ACTIVITIES
1. Transportation of people and materials
    - a. Highway impacts
      - i. Construction
      - ii. Operations
      - iii. Decommissioning
    - b. Railroad impacts
  2. Transportation of nuclear wastes
    - a. Shipment and routing nuclear waste shipments
      - i. National shipment and routing
      - ii. Regional shipment and routing
    - b. Radiological impacts
      - i. National impacts
      - ii. Regional impacts
      - iii. Maximally exposed individual impacts
    - c. Nonradiological impacts
      - i. National impacts
      - ii. Regional impacts
    - d. Risk summary
      - i. National risk summary
      - ii. Regional risk summary
    - e. Costs of nuclear waste transportation
    - f. Emergency response
- D. EXPECTED EFFECTS ON SOCIOECONOMIC CONDITIONS
1. Economic conditions
    - a. Labor
    - b. Materials and resources
    - c. Cost
    - d. Income
    - e. Land use
    - f. Tourism
  2. Population density and distribution

3. Community services
    - a. Housing
    - b. Education
    - c. Water supply
    - d. Waste-water treatment
    - e. Public safety services
    - f. Medical services
    - g. Transportation
  4. Social conditions
    - a. Social structure and social organization
      - i. Standard effects on social structure and social organization
      - ii. Special effects on social structure and social organization
    - b. Culture and lifestyle
    - c. Attitudes and perceptions
  5. Fiscal conditions and government structure
4. Suitability of the Yucca Mountain Site for Site Characterization and for Development as a Repository
- A. SUITABILITY OF THE YUCCA MOUNTAIN SITE FOR DEVELOPMENT AS A REPOSITORY: EVALUATION AGAINST THE GUIDELINES THAT DO NOT REQUIRE SITE CHARACTERIZATION
1. Technical guidelines
    - a. Postclosure site ownership and control
      - i. Data relevant to the evaluation
      - ii. Favorable condition
      - iii. Potentially adverse condition
      - iv. Evaluation and conclusion for the qualifying condition on the postclosure site ownership and control guidelines
    - b. Population density and distribution
      - i. Data relevant to the evaluation
      - ii. Favorable conditions
      - iii. Potentially adverse conditions
      - iv. Disqualifying condition
      - v. Evaluation and conclusion for the qualifying condition on the population density and distribution guideline
    - c. Preclosure site ownership and control
      - i. Data relevant to the evaluation
      - ii. Favorable condition
      - iii. Potentially adverse condition
      - iv. Evaluation and conclusion for the qualifying condition on the preclosure site ownership and control guideline

- d. Meteorology
  - i. Data relevant to the evaluation
  - ii. Favorable condition
  - iii. Potentially adverse condition
  - iv. Evaluation and conclusion for the qualifying condition on the meteorology guideline
- e. Offsite installations and operations
  - i. Data relevant to the evaluation
  - ii. Favorable conditions
  - iii. Potentially adverse conditions
  - iv. Disqualifying condition
  - v. Evaluation and conclusion for the qualifying condition on the offsite installations operations guideline
- f. Environmental quality
  - i. Data relevant to the evaluation
  - ii. Favorable conditions
  - iii. Potentially adverse conditions
  - iv. Disqualifying conditions
  - v. Evaluation and conclusion for the qualifying condition on the environmental quality guidelines
- g. Socioeconomic impacts
  - i. Data relevant to the evaluation
  - ii. Favorable conditions
  - iii. Potentially adverse conditions
  - iv. Disqualifying condition
  - v. Evaluation and conclusion for the qualifying condition on the socioeconomic guideline
- h. Transportation
  - i. Data relevant to the evaluation
  - ii. Favorable conditions
  - iii. Potentially adverse conditions
  - iv. Evaluation and conclusion for the qualifying condition on the transportation guideline
- 2. Preclosure System
  - a. Preclosure system: radiological safety
    - i. Data relevant to the evaluation
    - ii. Evaluation of the Yucca Mountain site
    - iii. Conclusion for the qualifying condition on the preclosure system guideline radiological safety
  - b. Preclosure system: environment, socioeconomics, and transportation
    - i. Data relevant to the evaluation
    - ii. Evaluation of the Yucca Mountain site
    - iii. Conclusion for the qualifying condition on the preclosure system guideline: environment, socioeconomics, and transportation

3. Postclosure technical
  - a. Geohydrology
    - i. Data relevant to the evaluation
    - ii. Favorable conditions
    - iii. Potentially adverse conditions
    - iv. Disqualifying condition
    - v. Evaluation and conclusion for the qualifying condition on the postclosure geohydrology guideline
  - b. Geochemistry
    - i. Data relevant to the evaluation
    - ii. Favorable conditions
    - iii. Potentially adverse conditions
    - iv. Evaluation and conclusion for the qualifying condition on the postclosure geochemistry guideline
    - v. Plans for site characterization
  - c. Rock characteristics
    - i. Data relevant to the evaluation
    - ii. Favorable conditions
    - iii. Potentially adverse conditions
    - iv. Evaluation and conclusion for the qualifying condition on the postclosure rock characteristics guideline
  - d. Climatic changes
    - i. Data relevant to the evaluation
    - ii. Favorable conditions
    - iii. Potentially adverse conditions
    - iv. Evaluation and conclusion for the climate changes qualifying condition
  - e. Erosion
    - i. Data relevant to the evaluation
    - ii. Favorable conditions
    - iii. Potentially adverse conditions
    - iv. Disqualifying condition
    - v. Qualifying condition
  - f. Dissolution
    - i. Data relevant to the evaluation
    - ii. Favorable condition
    - iii. Potentially adverse condition
    - iv. Disqualifying condition
    - v. Evaluation and conclusion for the qualifying condition on the postclosure and dissolution guideline
  - g. Tectonics
    - i. Data relevant to the evaluation
    - ii. Favorable condition
    - iii. Potentially adverse condition
    - iv. Disqualifying condition
    - v. Evaluation and conclusion for the qualifying condition on the postclosure tectonics guideline

- h. Human interference: natural resources and site ownership and control
  - i. Data relevant to the evaluation
  - ii. Favorable conditions
  - iii. Potentially adverse conditions
  - iv. Disqualifying conditions
  - v. Evaluation and conclusion for the qualifying condition on the postclosure human interference and natural resources technical guideline
- 4. Postclosure system
  - a. Evaluation of the Yucca Mountain Site
    - i. Quantitative analyses
    - ii. Qualitative analysis
  - b. Summary and conclusion for the qualifying condition on the postclosure system guideline
- 5. Preclosure technical
  - a. Surface characteristics
    - i. Data relevant to the evaluation
    - ii. Favorable conditions
    - iii. Potentially adverse conditions
    - iv. Evaluation and conclusion for the qualifying condition on the preclosure surface characteristics guideline
  - b. Rock characteristics
    - i. Data relevant to the evaluation
    - ii. Favorable conditions
    - iii. Potentially adverse conditions
    - iv. Disqualifying condition
    - v. Evaluation and conclusion for the qualifying condition on the preclosure rock characteristics guideline
  - c. Hydrology
    - i. Data relevant to the evaluation
    - ii. Favorable conditions
    - iii. Potentially adverse condition
    - iv. Disqualifying condition
    - v. Evaluation and conclusion for the qualifying condition on the preclosure hydrology guideline
  - d. Tectonics
    - i. Data relevant to the evaluation
    - ii. Favorable condition
    - iii. Potentially adverse conditions
    - iv. Disqualifying condition
    - v. Evaluation and conclusion for the qualifying condition on the preclosure tectonics guideline
- 6. Ease and cost of siting, construction, operation, and closure
  - a. Data relevant to the evaluation
  - b. Evaluation

- c. Conclusions for the qualifying condition on the ease and cost of siting, construction, operation, and closure guideline
- 7. Conclusion regarding suitability of the Yucca Mountain Site for site characterization

B. PERFORMANCE ANALYSES

- 1. Preclosure radiological safety assessments
  - a. Preclosure radiation protection standards
  - b. Methods for preclosure radiological assessment
    - i. Radiological assessment of construction activities
    - ii. Radiological assessment of normal operations
    - iii. Radiological assessment of accidental releases
- 2. Preliminary analysis of postclosure performance
  - a. Subsystem descriptions
    - i. Engineered barrier subsystem
    - ii. The natural barrier subsystem
  - b. Preliminary performance analyses of the major components of the system
    - i. The waste package lifetime
    - ii. Release rate from the engineered barrier subsystem
  - c. Preliminary system performance description and analysis
  - d. Comparisons with regulatory performance objectives
  - e. Preliminary evaluation of disruptive events: disruptive natural processes
  - f. Conclusions

5. Transportation

A. REGULATIONS RELATED TO SAFEGUARDS

- 1. Safeguards
- 2. Conclusion

B. PACKAGINGS

- 1. Packaging design, testing, and analysis
- 2. Types of packaging
  - a. Spent fuel
  - b. Casks for defense high-level waste and West Valley high-level waste
  - c. Casks for use from an MRS to the repository
- 3. Possible future developments
  - a. Mode-specific regulations
  - b. Overweight truck casks
  - c. Rod consolidation
  - d. Advanced handling concepts
  - e. Combination storage/shipping casks

C. POTENTIAL HAZARDS OF TRANSPORTATION

1. Potential consequences to an individual exposed to a maximum extent
  - a. Normal transport
  - b. Accidents
2. Potential consequences to a large population from very severe transportation accidents
3. Risk assessment
  - a. Outline of method for estimating population risks
  - b. Computational models and methods for population risks
  - c. Changes to the analytical models and methods for population risks
  - d. Transportation scenarios evaluated for risk analysis
  - e. Assumption about wastes
  - f. Operational considerations for use in risk analysis
  - g. Values for factors needed to calculate population risks
  - h. Results of population risk analyses
  - i. Uncertainties
4. Risks associated with defective cask construction, lack of quality assurance, inadequate maintenance and human error

D. COST ANALYSIS

1. Outline method
2. Assumptions
3. Models
4. Cost estimates
5. Limitations of results

E. BARGE TRANSPORT TO REPOSITORIES

F. EFFECT OF A MONITORED RETRIEVABLE STORAGE FACILITY ON TRANSPORTATION ESTIMATES

G. EFFECT OF AT-REACTOR ROD CONSOLIDATION ON TRANSPORTATION ESTIMATES

H. CRITERIA FOR APPLYING TRANSPORTATION GUIDELINE

I. DOE RESPONSIBILITIES FOR TRANSPORTATION SAFETY

1. Prenotification
2. Emergency response
3. Insurance coverage for transportation accidents

J. MODAL MIX

1. Train shipments
  - a. Ordinary
  - b. Dedicated train
2. Truck shipments
  - a. Legal weight
  - b. Overweight