

5/31/88

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MINUTES OF THE HLW LICENSING SUPPORT SYSTEM  
ADVISORY COMMITTEE MEETING

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

MEETING LOCATION AND ATTENDANCE

The seventh meeting of the HLW Licensing Support System Advisory Committee (hereafter referred to as the committee) was held on May 18, 1988 from 9:00 a.m. to 7:00 p.m. and May 19, 1988 from 9:00 a.m. to 4:00 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 and ANNOUNCEMENTS

As its first item of business, the committee discussed the draft minutes from the committee's April meeting. Several changes were suggested and incorporated into those minutes. The facilitator also asked if there were any suggestions for changes to the draft minutes of the March 22-24, 1988 meeting, which had not yet been made final. No suggestions for changes were made by the members of the committee.

The facilitator announced that the NRC and DOE spokespersons both had job changes in the recent past but in both cases these individuals explained that they would continue to represent their agencies in these negotiations.

The facilitator also noted that the NRC had received and responded to a letter from Governor Roy Romer on behalf of the Corridor Governments Planning Group expressing their disappointment in the committee's decision respecting their participation. The facilitator circulated a copy of both of these letters (see Attachment 2).

DISCUSSION OF THE DRAFT RULE

The first and only agenda item for the committee was to review and discuss the latest version of the draft rule which had been revised on the basis of discussions at the last meeting and distributed to the members of the committee on May 3, 1988 (see Attachment 3).

NRC representatives explained that the draft rule now before the committee should be considered the negotiating committee's draft rather than the NRC's draft in the sense that it reflects changes that the committee had tentatively agreed to at its last meeting. The NRC, as a party to the negotiations, had additional changes to suggest at this meeting.

The committee agreed that it would simply discuss the draft rule section by section and get as far as they could before the end of the meeting. The facilitator explained that when he asked whether there was any dissent at the end of each section or each page, that this was an opportunity for committee members to

express any dissatisfaction with the proposed language and make suggestions for changes. If no such comments or suggestions are forthcoming the assumption will be that the committee has reached a tentative agreement on the language in the draft rule. He explained that there will be opportunities to go back and make additional changes but, generally speaking, the process had reached the stage where it is essential for the committee to express their concerns and strive to achieve clear agreements, albeit tentative agreements, on the specific language to be used in the draft rule.

(Author's note: The following is an attempt to capture the committee's discussion regarding the major substantive changes it made or considered making to the draft rule. There is a possibility that some minor editorial changes which were made by the committee are not reflected in these minutes. Readers who are interested in the precise nature of all changes made to the draft rule should refer to the May 30, 1988 version).

#### Section 2.100 Scope of the Subpart

No suggestions for changes were made to this section.

#### Section 2.1001 Definitions

The committee agreed to make several changes to this section. These changes are summarized below.

**Bibliographic header** - The committee agreed to change the definition of this term to read: "'bibliographic header' means the minimum series of descriptive fields defined by the LSS Administrator that a potential party or party must submit with a document or other material. The bibliographic header fields are a subset of the fields in the full header." DOE representatives suggested that the term "as defined by the LSS Administrator" be removed from the definition. They explained that they needed to have these fields defined now and that it was their understanding that the technical work group will be making recommendations on this issue to this committee. The committee decided to discuss this issue in more detail under the LSS Administration section.

**Circulated draft** - The committee agreed to the following definition for this term: "'circulated draft' means a nonfinal document circulated for supervisory concurrence or signature which did not become a final document due to objections or revisions by someone other than the original author or authors and in which the original author or others in the concurrence process non-concurred."

**Full header** - The committee agreed to the following definition for this term: "'full header' means the series of descriptive fields and subject terms given to a document or other material."

**Image** - The committee agreed to that the word "disk" should be changed to "media."

LSS Administrator - The committee agreed that the second sentence of this definition should be changed to read: "The LSS Administrator shall not represent the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or be part of the same management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards." The committee agreed that the intent of this definition should be clarified in the preamble.

Party - The committee agreed to substitute the definition used in the draft rule with language that was proposed by the representatives of the State of Nevada and modified slightly on the basis of committee discussion. The newly agreed upon definition reads as follows: "'party' for purposes of this subpart means the license applicant, the NRC staff, the host state and any affected indian tribe in accordance with section 60.63(a) and a person 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. Provided that a host state or affected indian tribe shall file a list of contentions in accordance with the provisions of section 2.1015(a)(2)(ii), (iii) and (iv). 'Party' does not include the LSS Administrator." EEI's representative stated that there may be a problem with this definition in that "units of governments admitted under section 2.715(c)" are not required to file contentions and are therefore not truly a "party" to the proceeding. NRC representatives stated that the easiest way to address this problem would be to add a category of "interested government participant and remove the reference to section 2.715(c).

Potential party - The committee agreed to the language used in the draft rule and to add a sentence to this definition that would allow "potential party" status to be carried forward to the first pre-hearing order on a petition to intervene as a party.

Pre-license application phase - The committee agreed to the language used in the draft rule, but directed the NRC to explain in the preamble that until the LSS is fully operational, potential parties will only have access to whatever information is available in the LSS.

Personal record - The committee agreed to insert the words "or possessor's" following the word "author" and prior to the words "sole discretion."

Section 2.1001 - High-Level Waste Licensing Support System; and  
Section 2.1002 - Scope of the Licensing Support System

The committee agreed to combine these two sections into one section and to renumber the paragraphs of these two sections and all of the remaining sections accordingly. (Authors note:

reference to section numbers in the remainder of the minutes reflects this renumbering.)

The committee agreed to remove several clauses in the new paragraphs (a) and (b) that committee members considered to be redundant with the definition of "documentary material." The committee also agreed to change the words "State of Nevada" in paragraph (b) to "host state." It was clarified that the new paragraph (d) was meant to address the rights of parties and potential parties under the Freedom of Information Act (FOIA), as well as several other "independent rights." It was agreed that this should be fully explained in the preamble to the rule.

#### Section 2.1003 - Submission of material to the LSS Paragraphs (a)-(c)

EEI's representative asked why DOE had been separated out for special treatment in paragraphs (a)-(c). NRC responded that because DOE would be doing the tasks specified in these paragraphs as part of its internal records management system, NRC did not want to place duplicative requirements on the LSS Administrator. DOE representatives stated that, although they did not have a clear idea as to how many documents might fall into this category there may be some documents which would not be captured through their internal records management system but would nevertheless be required to be entered into the LSS. The NRC spokesperson stated that they wanted to avoid a situation in which there is a crunch at the end of the pre-license application phase concerning the entry of backlogged DOE documents that somehow becomes or is the responsibility of the LSS administrator. DOE suggested, and NRC and the committee agreed, that the NRC should also be singled out in the same way that the DOE had been singled out in paragraphs (a)-(c). Thus, it was agreed that the words "and the NRC" should be inserted in each of these paragraphs following the words "license applicant."

The agreed upon changes to paragraphs (a)-(c) would require both the DOE and the NRC to submit to the LSS Administrator an ASCII file, an image and a bibliographic header for all documentary material generated by these parties regardless of when the document was generated. Whereas, all other parties or potential parties will be required to submit an ASCII file, an image and a bibliographic header only for documentary material that is generated by that party after it has been granted access to the LSS. For documentary material generated by a party or potential party (other than DOE or NRC) prior to the date that they are granted access to the LSS, they need only submit an image and a bibliographic header and the LSS administrator would be required to convert the document into an ASCII file and enter it into the LSS.

NRC representatives explained that in paragraph (a)(1) they had tried to make it clear that circulated drafts that did not become final drafts due to the fact that there was never a final decision were to be included in the LSS. After agreeing that this should be the intent of the language, the committee agreed to remove the words "relating to a final decision" in paragraphs (a)(1) and (a)(2). (Authors note: In so doing the committee also changed the definition of "circulated draft" by inserting the word "objections." This change has already been reflected in

these minutes in the discussion of the definitions section.) The committee agreed that any further explanation of this issue should occur in the preamble.

EEI's representative questioned whether the references to the "topical guidelines" that are made in paragraphs (b) and (c) were meant to indicate the scope of relevant or potentially relevant information or to specify the categories of information that should be included in the LSS in searchable full text. Other committee members stated that their understanding of the committee's tentative agreements up to then was that these lists were meant to serve as guidance on what should be considered relevant or potentially relevant and that anything that falls within this scope would be entered into the LSS in searchable full text, with the exception of the items listed in the exclusion section. It was pointed out that this interpretation was reflected in the definition given to the term "documentary material" and the manner in which this term is used in Section 2.1003. EEI's representative stated that EEI was not yet ready to give the committee its final position on whether they find this approach acceptable.

The NRC clarified again that they do not want these lists included in the rule because it would be too difficult to modify them after the rule has been made final. The committee agreed to strike the reference to the topical guidelines in paragraphs (b) and (c) because several members believed that these references were redundant with the reference to the topical guidelines made in the definition of "documentary materials."

Representatives of the State of Nevada asked whether there should be any time requirements placed on the submission of documentary material under this section. In particular, they stated that their recollection was that the committee had agreed that documents generated after a party or potential party is granted access to the LSS would be entered "reasonably contemporaneously" with the documents generation, and for DOE's backlogged documents, if they had not been entered into the LSS within six months prior to the date upon which the application was intended to be submitted, the application must be submitted under Subpart G rather than Subpart J. Alternatively, the DOE could delay the submission of the application until such time as they have come into compliance with the LSS.

The committee agreed that this was their intent and that this section should be revised in order to reflect the "reasonably contemporaneous" concept with respect to new or "prospectively generated" documents. It was pointed out that the issue of time requirements for submitting "backlogged" documents is addressed in paragraph (j)(1) and (2), as well as in other sections of the draft rule, particularly sections 2.1011 and 2.1012. It was noted that paragraphs (a)-(c) would probably have to be reorganized in order to deal with time considerations since paragraph (c) currently combined both "backlogged" and "prospectively generated" documents without addressing the timing of their entry.

The question was then raised as to how contractor documents will be handled given the definitions for circulated drafts and the requirement for "reasonably contemporaneous" entry into the LSS. A representative of the State of Nevada stated that their

position was that when a contractor signs off on a document as being a final document, that is when it should be put into the LSS rather than when it becomes the agency's final document. NRC representatives stated that the language of (a)(1) which says "generated by, or at the direction of ..." was meant to address this issue and should be interpreted to mean that contractor documents will be included in the LSS when they become final documents. DOE representatives stated that there may be a potential problem with this approach in that it would require them to renegotiate many of their existing contracts. Nevada representatives made it very clear that their overall agreement to this rule hinged in large part on whether DOE contractors would be required to comply with the LSS rule. DOE's spokesperson stated that as long as a document meets the definition of "documentary material" and "circulated drafts" it will be entered into the LSS regardless of whether it is a contractor document or an internal document.

#### Paragraph (d)

EEI's representative questioned whether paragraph (d) should be removed. He stated that this paragraph essentially constitutes a requirement for establishing a certain form of internal records management that is beyond the scope of this rulemaking. In particular, he stated that some organizations may simply provide comments on circulated drafts through notations in the margins of documents. Such organizations should not be required to establish a whole new and completely separate internal records management procedure for purposes of compliance with this rule. DOE representatives stated that comments on circulated drafts will be captured as part of the circulated draft and entered into the LSS as a single unit, subject to justifiable privileges. NRC representatives stated that free standing comments on circulated drafts would be considered final agency documents and therefore subject to entry into the LSS, again subject to any justifiable privileges. Representatives of the State of Nevada stated that they were willing to strike paragraph (d). Representatives of the environmental coalition stated that they were not yet willing to agree to strike this paragraph because some parties may not operate in the manner indicated in paragraph (d). The committee agreed that this section should be removed from the next version of the draft rule, pending the environmental coalition's review of the draft without this paragraph.

#### Paragraph (e)

Representatives of the State of Nevada proposed alternative language for paragraph (e)(1) which would give the Advisory Review Board a role in determining what is and is not suitable for entry into the LSS. This language attempts to address the possibility that some of the categories of documentary material listed in the draft rule as unsuitable for entry into the LSS may actually be suitable, at least in part. The language proposed by Nevada was as follows:

"Each potential party or party shall submit a bibliographic header for all documentary material determined to be unsuitable for entry into the (LSS) in searchable full text. Such material may include all, or parts of, such categories of documentary material as raw data, computer runs, computer programs and codes, field notes, core samples, maps, photographs, and travel vouchers for travel funded by the Nuclear Waste Fund established pursuant to section 302 of the (NWPA)."

DOE representatives stated that this language was acceptable as long as it did not mean that the categories listed would be dealt with on a case by case basis. Nevada representatives explained that their intent was that it be possible to capture such things as "field notes" and "raw data" in the LSS if these documentary materials can in fact be captured. They stated that they are concerned that the current version of the draft rule might ultimately be used to exclude documentary material that would otherwise be required to be entered and be suitable for entry into the LSS.

The spokesperson for the NRC stated that their intent was to identify categories of information that are clearly unsuitable for entry into the LSS in searchable full text. He suggested that perhaps the two offensive terms, "raw data" and "field notes," should be removed from this list if there is no agreement that they clearly are unsuitable. He also stated that he did not want the Advisory Review Board playing a role in deciding what should be excluded from entry into the LSS in searchable full text. He felt that this should be established in the rule and that any disputes over the interpretation of the rule should be resolved through Pre-license Application Licensing Board or the Licensing Board after the application has been submitted. He noted that the rule requires parties and potential parties to submit a bibliographic header that will describe these documentary materials.

Nevada representatives stated that they were concerned with the universality of the phrases used in the draft rule, particularly "raw data" and "field notes," and that excluding all such documentary material meant that the LSS was not really going to give them anything more than they would have had through traditional discovery. He also emphasized that the licensing proceeding itself is ultimately likely to be fought over raw data and the interpretations given to that data.

The facilitator noted that Nevada representatives and DOE were currently attempting to resolve problems that were experienced in trying to gain access to DOE's raw data and that if they are able to work out an agreement, which would not be a part of this rule, it might go a long way to resolving this issue. The spokesperson for the environmental coalition stated that such an agreement might resolve the issue for now, but this issue is likely to come up again so that it should be addressed in the rule itself.

The committee agreed that the bibliographic headers for documentary material that are unsuitable for entry into the LSS in searchable full text should include information on the location of the material. It was also suggested that it might be

useful to be more clear in the rule about why certain categories of documentary material are unsuitable for entry into the LSS in searchable full text, rather than simply listing the categories that are unsuitable as it does now. The committee agreed to address the issues raised by the State of Nevada at the next meeting, after Nevada and DOE representatives have a chance to meet and review the raw data and field notes that are currently being collected.

#### Paragraph (j)

It was agreed that the term "LSS Administrator" should be substituted for "Director of the Office of Nuclear Material Safety and Safeguards" throughout this subsection. By making this change, it was clarified that the staff function with respect to docketing will be separated from the certification of LSS compliance, with the former being kept under control of the NMSS and the latter under the control of the LSS Administrator.

It was also agreed that the evaluation of the DOE's compliance with the LSS rule by the LSS Administrator under (j)(2)(i) should occur at six month intervals after the LSS Administrator has been appointed, rather than six month intervals after the appointment of the Pre-license Application Licensing Board. Under (j)(2)(ii), it was agreed that the word "publish" should be substituted for "prepared."

It was also agreed that paragraph (j)(3) should be revised as follows:

"In the event that the LSS Administrator does not certify substantial compliance under paragraph (j)(1) of this section, the proceeding on the application for a license to receive and possess high-level radioactive waste a geologic repository operations area shall be governed by subpart G of this part."

It was also agreed that paragraph (j) should be revised so that it was clear that DOE could request the LSS Administrator to evaluate their compliance with the LSS rule sooner than the six month interval if DOE believes they are in compliance.

Several committee members asked whether there would be any avenues of appeal to the LSS Administrator's decision concerning DOE's compliance with the LSS rule. NRC representatives stated that it was their intent that such decisions could be appealed to Pre-license Application Licensing Board and from there to the Commission.

EEI's representative stated that the draft rule did not seem to allow for the proceeding to shift from Subpart G to Subpart J if DOE came into compliance with the LSS rule after docketing under Subpart G. The NRC spokesperson stated that this was because the three year licensing deadline will not be met if the application is submitted under subpart G and one of the primary purposes of Subpart J is to meet the three year deadline. EEI's representative stated that it would be understood that if DOE submitted their application under Subpart G the NRC would not be expected to meet the three year deadline. He added that it would be wasteful not to take advantage of the time savings that would be

afforded by the LSS when and if DOE comes into compliance with Subpart J, even if this occurs after the application has been docketed under Subpart G. Representatives of the State of Nevada agreed with this suggestion. It was agreed that EEI's representative would propose language to accomplish this objective, that NRC representatives would consider this language, and that the committee would take this up again at its next meeting.

#### Section 2.1004 - Amendments and Additions

EEI's representative questioned whether the requirement that verification of correct entry occur within five days of the entry of the documents would be possible for DOE given that the current estimate is that it will be entering some 18,000 pages per day of backlogged material during the pre-application phase. It was agreed that the five day verification requirement should be used during the post application period and that a more reasonable period, perhaps 30 or 60 days be used during the pre-application period.

EEI's representative also questioned whether the language used in paragraph (d)(1) was meant to imply that each page that would be entered into the LSS as a revision to a previous entry (as opposed to the correction of a previous entry under paragraphs (a)-(c)) would be entered as a separate document. NRC representatives stated that the concept was to only enter the revised pages into the LSS and that if there was more than one page being revised, the collection of revised pages for that document would be entered together as a separate document. A bibliographic header would not only be entered for this new document, explaining exactly what the document contains, but, as specified in paragraph (d)(2), the bibliographic header for the original document would be revised to indicate that revisions have been made to the document and that these revisions have been entered into the LSS as a separate document. It was agreed that the language used in paragraph (d)(1) should be revised to reflect this understanding.

#### Section 2.1005 - Exclusions

No major substantive changes were made to this section.

#### Section 2.1006 - Privilege

It was agreed that paragraph (a) of this section should be changed to read as follows:

"Subject to the requirement in section 2.1003(f) of this subpart, the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in section 2.790 of this part may be asserted by potential parties and parties. In addition to Federal agencies, the deliberative process privilege may be asserted by State and local government entities, and Indian Tribes."

EEI's representative asked whether the concept in paragraph (b) was that the LSS will or will not include a protective order file. NRC representatives responded that paragraph (b) does not

preclude the possibility of entering a protective order file into the LSS, but it does not require that it be entered into the LSS. Rather, it leaves it up to the Licensing Board to determine whether it should be entered into the LSS. The reason why this approach has been taken is that the security of documents that are entered into the LSS cannot be guaranteed, but in some instances placing a document into a protective order file may not require an absolute guarantee. Thus, the NRC stated that it would like to give the Licensing Board with some flexibility to decide how to handle this on a case by case basis.

DOE representatives stated that this section does not adequately address the need to protect classified information. NRC representatives responded that the handling of such information is addressed under Subpart I of their rules. It was agreed that this section of the rule would be revised to indicate that classified information would be subject to Subpart I and would not be entered into the LSS.

#### Section 2.1007 - Public Access

Representatives of the environmental coalition asked the NRC when the public access terminals referred to in paragraphs (a)(1)-(3) will be available. The NRC representatives responded that it was their intent that these terminals will be made available at the same time that access to the LSS will be available to potential parties. Environmental representatives requested that the language used in these paragraphs be revised to reflect this understanding.

It was also agreed that the location of the public access terminals specified in paragraphs (a)(1) through (a)(3) would be referenced in paragraph (a)(4) so that it would be clear that the public access terminals referred to in (a)(4) would be in the same locations as those in paragraphs (a)(1)-(a)(3).

On the basis of a question asked by a representative of the environmental coalition, it was clarified that remote access by members of the public to the full headers which would be made available in the public document rooms referred to in paragraph (a) would not be possible. If an individual or organization wanted to gain access to any portion of the LSS from a remote location they would have to petition the Licensing Board for potential party or party status. Otherwise, they would only have access to the full headers at the locations specified in paragraph (a).

The spokesperson for the environmental coalition asked what the purpose of paragraph (d) was and the NRC spokesperson explained that this paragraph was inserted in order to make it clear that the LSS Administrator is not a separate federal agency for purposes of compliance with the Freedom of Information Act (FOIA). In other words, documents that are submitted to the LSS Administrator for entry into the LSS would remain under the custody or control of the agency or organization that submitted the document. Thus, FOIA requests for agency records that are in the LSS must be made to the federal agency that submitted the document. Documents that are submitted by potential parties other than federal agencies would not be subject to FOIA and, thus, would not be made available unless the potential party or party that submitted the document chose to make it available

independently. After the license application has been docketed, the portion of the LSS that constitutes the docket would be subject to FOIA regardless of who submitted the document.

The spokesperson for the environmental coalition proposed that the paper copy availability of LSS documents referred to in paragraph (b) be required to occur within 10 days, as is required by FOIA. NRC representatives responded that for federal agency records that are already in the LSS there should be no reason why the agency that submitted them should not be able to meet the 10 day deadline for responding to FOIA requests. However, he stated that it would not be acceptable for the LSS Administrator to be responsible for enforcing such a requirement. The intent of paragraph (b) was to indicate that paper copy availability, duplication fees, and fee waivers would be governed by the FOIA regulations of the agency that submitted the documents. They suggested that the mechanics of all of this, which are not immediately apparent in the rule itself, would be spelled out in the preamble to the rule.

It was also suggested that the mechanics of potential party and party access under paragraph (c), and in particular who pays for what elements of the costs of access, also be spelled out in the preamble. EEI's representative asked whether there was any limit to the number of pages that can be subject to a FOIA fee waiver. The NRC spokesperson replied that there was no such limit and the environmental spokesperson added that section 9.41 of the NRC's rules specifies criteria for what is a reasonable request in this regard.

The spokesperson for the environmental coalition asked what had happened to the notion of priority seating at public access points for parties or potential parties who cannot afford the necessary equipment to gain access from a remote location. She stated that these parties would be forced to use the public document rooms to gain access to the LSS. NRC representatives stated that if this becomes a problem the agency will simply add terminals to the public document rooms. He reiterated, however, that only the full headers of all LSS documents and images of whatever federal agency's public document room one happens to be sitting in, would be available at these public access terminals during the pre-application phase. It is only after the license application has been submitted and docketed that the searchable full text and headers of all documents will be made available on the terminals located in the public document rooms referred to in paragraph (a). NRC noted that joint public and party access to terminals located in public document rooms has been accomplished successfully in other NRC proceedings and, in these proceedings, procedures were established to ensure priority access by the parties.

The committee agreed to add language to section 2.1010 that would allow disputes between potential parties over access to the LSS to be brought to the Pre-license Application Licensing Board.

#### Section 2.1008 - Potential Parties

It was agreed that the three factors set out in paragraphs (b)(1)-(3) and (c)(1)(i)-(iii) should be revised such that the first and third factors be combined and the words "the criteria in," as used in the second item be changed to "compliance with."

spokesperson suggested that paragraph (c)(1) either that it be changed such that it removes the that Pre-license Application Licensing Board to grant access to the LSS constitute a presumptive that the person or entity be granted party status lication has been submitted. The spokesperson for ntal coalition indicated that she would support paragraph. EEI's representative questioned the NRC ure of their concerns and the NRC spokesperson at the members of the PALB will probably not be the als who will serve as the members of the Licensing at it would not be good practice to have the decision itute a presumptive determination for the other. shifts the burden of proof at the licensing phase ty to the Licensing Board. It was agreed that the vise this language to indicate that the decision of uld be considered by the Licensing Board when it ation for leave to intervene that is submitted by an had previously been granted access to the LSS as a "party" by the PALB. EEI's representative stated that hold judgment until he had a chance to review the

Discussing paragraph (e), it was clarified that the t NRC was trying to address in providing for the of consolidation of potential parties during the application phase had more to do with limitations exist with respect to the number of people who could ve access to the LSS. Since this was mainly to be a technical systems design or redesign issue, ee agreed to strike this paragraph. They believed roblem should be addressed in other sections of the ome time in the future through the mechanisms d by this rule.

1009 Procedures  
s agreed that the words "a LSS" as used in paragraph changed to "the submitter's unique." It was also t a sentence be added to paragraph (b) which would read : "The certification will occur at six month intervals blished by the LSS Administrator."

1010 - Pre-License Application Licensing Board  
ors note: As part of its discussions regarding section Access -- the committee had agreed to add to the list found in paragraph (a)(1), of issues and categories of which can be handled by the Pre-license Application Board (PALB), disputes over access to the LSS, as shed from petitions for access to the LSS.) esentatives from the State of Nevada asked how disputes em design which occur before the formation of the PALB addressed. They wondered if there was a role that the of this committee and their technical representatives ay during the interim period between now and the of the PALB.  
representatives noted that the conceptual design for the ill be completed sometime within the next two weeks and

that they will be distributing copies of the report which outlines this conceptual design to all committee members and their technical representatives. They also noted that the cost/benefit study that they are preparing will be completed in July and, if the committee is still in operation at that time, committee members and/or their technical representatives will have an opportunity to review both studies to ensure that they meet the requirements of the LSS rule.

It was suggested that the rule require the NRC??? to establish the PALB directly following the publication of a final rule. The NRC spokesperson stated that, due to resource constraints, the agency could not agree to activate the PALB any sooner than two years prior to the submission of the license application. Several committee members suggested that the PALB should be established and ready to deal with petitions for access to the LSS either in advance of, or as soon as the LSS was up and running.

Based on this discussion, it was agreed that paragraph (a)(2) would be revised as follows: "The Pre-license Application Licensing Board shall be designated six months prior to the date upon which the LSS is likely to become operational."

The spokesperson for the environmental coalition suggested that the committee agree to establish a separate body to advise DOE on system design issues from now until the formation of the PALB. One possibility that was discussed was for the DOE to establish a separate advisory committee under the Federal Advisory Committee Act (FACA) with the same membership as the NRC's present LSS Advisory Committee (i.e., this committee).

Another approach that was suggested was for this committee to formally establish a subcommittee which would be composed of the technical representatives of each member of the committee. The NRC spokesperson stated that although the agency intended to propose and finalize the LSS rule by the end of this calendar year, the charter for this committee allows for its continued existence until August 1989. This proposed subcommittee, unlike the technical work group that is presently operating and providing advice to the committee as a whole, would be subject to the open meeting requirements of FACA. However, it was suggested that if such a subcommittee were to be established that it not be granted the same authority that this committee has been granted, nor be subject to this committee's protocols concerning consensus decision making. In other words, its role would be limited to providing advice to DOE and NRC concerning design of the LSS. It was agreed that this issue would be taken up again at the June meeting, after committee members have had an opportunity to review DOE's conceptual design report.

#### Section 2.1011 - LSS Administrator

(Author's note: The committee discussed this section of the draft rule at the end of the day on May 18, the first day of the meeting. Based on the extensive changes that the committee contemplated making to this section, the committee requested that NRC staff redraft this section entirely and distribute copies of the redrafted section the next morning. Upon reviewing the revisions made by the NRC staff, the committee agreed to make

additional changes. Because there were many iterations and changes made to this section during the course of the committee's discussion, and because these changes will ultimately be reflected in the next version of the draft rule, these minutes attempt to capture only the conceptual nature of those changes rather than the precise language that was tentatively agreed upon at this meeting.

Also, as part of its discussion of the definitions section, the committee had agreed to include a definition of "LSS Administrator." This definition states that the LSS Administrator shall be the person or entity in the NRC that will be responsible for administration, management, and operation of the LSS, and specifies that this person or entity shall not represent the NRC as a party to the licensing proceeding or be part of the management chain which reports to the Director of the Office of Nuclear Material Safety and Safeguards.)

The committee agreed that the LSS Administrator should be designated 60 days after the effective date of the rule and that the U.S. Department of Energy, in consultation with the LSS Administrator, will be responsible for the design, development, testing and procurement of the LSS including hardware, application software, documentation of the procedures for maintenance of the LSS, and all follow-on redesign and procurement of the equipment and software necessary to maintain the LSS.

Consistent with agreements reached by the committee at prior meetings, it was agreed that the LSS would not be part of any computer system that is controlled by an party or potential party to the licensing proceeding, including DOE and its contractors. Nor shall the LSS be physically located on the premises of any party or potential party, including DOE and its contractors. However, there should be nothing in the rule language to preclude DOE or any other potential party or party from using the LSS computer facility for a records management system independent of the LSS.

The committee agreed that an LSS Advisory Review Board (ARB) should be established by the LSS Administrator within 60 days of his or her designation. The ARB would consist of representatives designated by the parties and potential parties to the proceeding. Several committee members pointed out that there was a problem in the timing of establishing the ARB in that the PALB will not be in place to make determination on petitions for potential party status for some time after the date upon which the ARB is scheduled to be established under this language. It was agreed that the rule should make reference to the technical subcommittee which was discussed earlier and that this subcommittee should serve the function of the ARB until such time as the PALB has been established and ruled on petitions for potential party status.

It was also agreed that the DOE and the LSS Administrator would implement the "consensus advice" of the LSS Advisory Review Board. Finally, the committee agreed to a number of specific functions for the LSS Administrator, the DOE, and the ARB which will be reflected in the next version of the draft rule.

### Section 2.1012 - Compliance

The committee agreed to revise the language of paragraph (a) to read as follows: "... (the Director of the NMSS) may determine that the tendered application is not acceptable for docketing under this subpart if the LSS Administrator has not certified that the license applicant is in substantial and timely compliance with section 2.1003 of this subpart."

Secondly, the committee agreed to revise the language of paragraph (b) such that a person, including potential parties, would not be granted party status until they can demonstrate substantial and timely compliance with section 2.1003. It was also agreed to add a sentence to the end of this paragraph which would allow a person or entity to petition for party status even if they had been previously rejected once they can demonstrate compliance with the LSS rule, however, such a person or entity would have to join the proceeding as they find it.

Thirdly, it was agreed that paragraph (d) would be revised to read as follows: "The (PALB) or the Hearing Licensing Board may suspend or terminate access to the LSS for any potential party or party who is in noncompliance with any applicable order of (these boards)."

EEL's representative asked what would happen if a necessary party, such as the State of Nevada, was not in compliance with the LSS rule. It was agreed that the sanction specified in paragraph (b), ineligibility for party status, was not applicable to entities such as the State of Nevada which are necessary parties to the proceeding. However, the sanction specified in paragraph (d), loss of access to the LSS, would apply to such parties.

### Discussion of the Use of the Words "A License to Receive and Possess" Versus "Construction Authorization"

Representatives of the State of Nevada questioned the meaning of the use of the term "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" throughout the draft rule. They noted that the NWPA calls for the issuance of a "construction authorization" within three years, rather than a "license to receive and possess." They asked NRC whether it was their intent to issue a license within three years. NRC representatives responded that it was their intent to issue a construction authorization within three years. They explained that the application is for a "license to receive and possess," but the first step in the approval of the license is the "construction authorization." They noted that this issue had been fully addressed and clarified in Part 60. When asked how long it would take to issue the license, they responded that it would depend on how long it would take for DOE to build the facility, assuming they had received a construction authorization. They explained that the actual license to receive and possess would not be issued until such time as DOE could show that they had built the facility in the manner specified in the construction authorization and that no new issues had arisen that would warrant reconsideration.

Nevada representatives stated that they were concerned that the proceeding that would occur up until the issuance of the

construction authorization, that is the proceeding that has been the focus of this negotiated rulemaking, would not address waste isolation issues. They asked the NRC whether DOE would have to address these and all other Part 60 requirements in order to be issued a construction authorization. NRC responded that DOE would have to address all Part 60 requirements and offered to put language into the preamble of this rule that would be consistent with the language used in the preamble to Part 60 which clarified that the construction authorization is part of and the first step in the licensing proceeding and that all Part 60 requirements had to be fulfilled before the issuance of such an authorization.

NRC was asked whether the remaining stages in the licensing proceeding following the issuance of the construction authorization will rely on the use of the LSS. They responded that there was no legal requirement to do so, but it was likely that the LSS would be made use of during these final stages of the licensing process.

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

EEI's representative asked how filings or parts of findings that could not be entered into the LSS in searchable full text (i.e., ASCII format) would be handled under paragraph (c)(1). NRC representatives responded that an image would be submitted to the LSS Administrator who would be responsible for getting it to the other parties. To the extent that there is a timing problem, they explained that it is only likely to occur if the image is not already part of the LSS. EEI's representative commented that it was his understanding that it was not yet determined whether electronic images will be part of the LSS.

#### Section 2.1014 - Intervention

The spokesperson for the environmental coalition explained that, from their perspective, there were three major differences between the language proposed for this section and the existing rules of practice specified in Section 2.714. These include:

- 1) Under 2.714(b) contentions must be filed no later than the first Pre-hearing Conference, whereas under 2.1014(a)(2) contentions must be filed along with the petition to intervene which is much earlier in the process.
- 2) Under 2.714(a)(3) amendments to the contentions specified in a petition for leave to intervene may be approved at any time by the presiding officer, whereas under 2.1014(a)(4) petitions to amend contentions may be made no later than 30 days after the issuance of the Safety Evaluation Report (SER).
- 3) Under 2.714(b) the bases for each contention must be set forth with "reasonable specificity," whereas section 2.1014(a)(2)(iii) and (iv) requires that reference be made to the specific documents in the LSS that provide the bases for each contention and to the specific regulatory or statutory requirement that needs to be satisfied.

The environmental spokesperson explained that they viewed each of these changes as a substantial loss in their intervention rights and that the gains that are proposed to offset these losses (i.e., early and enhanced access to documents through the LSS) were not sufficient. She proposed striking section 2.1014 entirely and referencing section 2.714, but stated that the coalition was willing to consider changes to section 2.1014 that addressed their concerns.

EEI's representative stated that it did not make sense to compare the NRC's reactor licensing process to the repository licensing process. The former is undertaken by private entities, whereas the latter has been, and will continue to be, a massive and prolonged public effort. DOE representatives stated that by the time the application is filed there will have been years of studies and analyses. They commented that, on the basis of these extensive studies combined with the use of the LSS, there surely must be some economies that are possible in terms of these issues.

A representative of the environmental coalition stated that it was not possible to predict what will happen with this program, the Nevada site may not be the ultimate site, and the ultimate site may not have ten years worth of study or the benefit of prolonged access to the LSS. He stated that the price for the benefits of the LSS should not require them to forego existing intervention rights. He noted that the environmental community had been engaged in a prolonged battle over changes to the NRC licensing process and that they were not about to simply give up on their hard fought positions at this time.

The spokesperson for the NRC explained that this rulemaking is, in part, an attempt to correct deficiencies with certain elements of the NRC's existing licensing process, namely the filing and amending of contentions. He explained that the major difference between the proposed rule and existing practice is that the initial phases of document discovery (i.e., everything short of depositions and interrogatories) will take place with the benefit of the LSS before contentions must be filed. Under the existing rule all phases of discovery occur after contentions have been filed. Thus, there is significantly more time allowed for the formulation of contentions under the proposed rule than under the existing rule which only allows 60 days for the formulation of contentions. He stated that he would be willing to consider changes to 2.1014 that would be consistent with this aspect of the existing rule.

With respect to the second point raised by the environmental coalition, NRC representatives explained that the SER will be issued after the first pre-hearing conference and that the proposed rule allows for amendments to contentions to be based on issues raised in the SER, whereas the existing rule does not.

Finally, with respect to the third point raised by the environmental coalition, NRC representatives explained that the proposed language is consistent with the existing rule and NRC case law. In other words, they explained, the way in which "reasonable specificity" has been interpreted through NRC case law is consistent with the requirement that parties reference the specific portion of documents in the LSS that provide the bases

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for contentions and the specific regulatory or statutory requirements that must be fulfilled. Vague contentions have consistently been disallowed and all this proposed rule does is to make it clear to everyone at the outset precisely how the requirement of "reasonable specificity" has been and will be interpreted.

(Author's note: The committee proceeded to discuss a number of options for dealing with the issues raised by the environmental coalition. These options centered around the timing for filing and amending contentions and the need to establish a "higher threshold" for amending contentions after an agreed upon cutoff time for amending contentions under the existing "lower threshold." Rather than detailing the precise nature of the options considered and the iterations thereof, the following paragraphs in these minutes simply capture the language changes that were ultimately agreed upon by the committee, albeit on a tentative basis.)

The committee agreed to revise the language of paragraph (a)(1) such that the third sentence of this paragraph would read as follows:

"The petition and/or request and any requests to participate under Section 2.175(c) of this part shall be filed within thirty days after the publication of the notice of hearing."

The committee also agreed to revise paragraph (a)(2)(iii) to read as follows:

"reference to specific documentary materials that provide a basis for the contention."

And finally, the committee considered revising the language for paragraph (a)(4) to read as follows:

"Any party may amend its contentions specified in paragraph (a)(2)(ii) of this section. The presiding officer shall rule on any petition to amend such contentions based on a balancing of the factors specified in paragraph (a)(1) of this section. Petitions to amend that are based on information or issues raised in the Safety Evaluation Report (SER) issued by the NRC staff may be made no later than 40 days after the issuance of the SER. Any petition to amend contentions that is filed after that time will, in addition to the factors specified in paragraph (a)(1) of this section, include a showing that a significant safety or environmental issue is involved or that the amended contentions raise material issues relating to the performance evaluation anticipated by 10 CFR 60.112 and 60.113."

In discussing the difference between "significant safety and environmental issues" and "material issues," it was clarified by several members of the committee that "material issues" are of a

higher standard or threshold than "significant safety and environmental issues" in that they must not only be "significant," they must also be "relevant" and of "practical consequence" to the final decision. EEI's representative stated that he did not see how the inclusion of the clause regarding material issues differed from the clause regarding significant safety or environmental issues. Nevada's representatives explained that they wished to include the latter clause in order to address the possibility that there might be issues of materiality that were not, technically speaking, safety or environmental issues. EEI's representative stated that he might be willing to tentatively commit to including the final clause if orders granting or denying petitions to add or amend contentions could be immediately appealed (see next section). The committee decided to include the language specified above in the next version of the draft rule and to reconsider this issue at its next meeting. \*

#### Section 2.1015 - Appeals

A representative of the environmental coalition asked whether 10 days for filing supporting briefs for appeals specified in paragraph (b) would be sufficient. NRC representatives responded that the types of issues raised in these interlocutory appeals are not very complex and are likely to be pretty much the same as in other proceedings. Therefore, they believed 10 days was sufficient. They also noted that there is a catchall provision for requesting an extension.

The committee agreed to add a subsection to paragraph (b) to be numbered (iv) which would read as follows:

"a Licensing Board order to add or amend one or more contentions pursuant to Section 2.1014(a)(4) of this subpart."

The committee also agreed to revise the language used in the second sentence of paragraph (d) to read as follows:

"The parties or potential parties may request the Board to certify, pursuant to section 2.718(i) of subpart G, rulings not immediately appealable under paragraph (b) of this section."

#### Section 2.1016 - Motions

EEI's representative suggested and the committee agreed to strike the words "during a hearing" from paragraph (a).

Nevada's representatives suggested removing paragraph (d) entirely or making changes that would make it clear that oral arguments on motions would be possible. NRC and the committee agreed to remove this paragraph and, by doing so, they agreed it would leave it to the discretion of the Licensing Board as per standard practice in section 2.755. It was noted that this section had already been referenced in section 2.1001.

#### Section 2.1017 - Computation of Time

Nevada's representatives asked how the computation of time would be handled if the system crashed (i.e. was not unoperational) for a significant period of time. NRC and the committee agreed to add a clause into this section of the rule which would address such a contingency by suspending the computation of time for whatever period the LSS was not operational.

#### Section 2.1018 - Discovery

The spokesperson for the environmental coalition suggested adding written interrogatories to the list of discovery methods in paragraph (a). NRC's spokesperson stated that he was not willing to permit endless rounds of interrogatories. The environmental representatives stated that they would be willing to agree to some sort of cutoff, either in terms of the timing of interrogatories or the number of permissible rounds of interrogatories. The committee discussed the possibility of placing a limit of the number of rounds and the number of requests per round, as well as the possibility of placing substantive limits on what interrogatories could be used for. NCAI's representative suggested that the committee attempt to define categories of abusive interrogatories rather than vice versa. Representatives of DOE and EEI agreed to propose language to accomplish this.

Nevada representatives proposed and the committee agreed to add language to paragraph (a) which list the permissible methods of discovery that would read as follows: "access to or the production of copies of documentary material for which only bibliographic headers have been submitted pursuant to section 2.1003(e)(1)."

(Author's note: The committee did not conclude its discussion of this section before running out of time and it decided to pick up the discussion of the draft rule at the next meeting beginning with this section.)

#### NEXT STEPS

The committee agreed that it would tentatively schedule an additional meeting beyond the next meeting, which is scheduled to take place on June 29-30 in Reno, Nevada. This additional meeting was tentatively scheduled to take place on July 20-21, pending approval by the Nuclear Regulatory Commission and progress made at the June meeting. In discussing the location for the tentatively scheduled July meeting, the committee agreed that it should be held in Reno, Nevada.

#### PUBLIC COMMENT

The facilitator asked if there were any members of the 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.

Attachment 1

List of Attendees

Committee Members

Dennis Bechtel  
Clark County

Steve Bradhurst  
Nye County

Chip Cameron  
NRC

Barbara Cerny  
DOE

David Cross  
EEI

Jim Davenport  
State of Nevada

Stan Echols  
DOE

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

Facilitators

Howard Bellman  
Matt Low  
Tim Mealey

Members of the Public

Philip Altomare  
NRC

Joya Amenta  
NRC

Kirk Balcom  
State of Nevada

Avi Bender  
NRC

John H. Frye  
NRC

Donnie H. Grimsley  
NRC

John Hoyle  
NRC

Ken Kalman  
NRC

Christine Kohl  
NRC

Robert Landau  
SIA/NRC Contractor

Terry Linton  
NRC

Robert McPherson  
Weston

David Nipper  
SAIC

W. Richard Pierce  
SAIC

Thomas Scarbrough  
NRC

Charles Smith  
DOE/OCRWM

Rosetta Virgilio  
NRC

ATTACHMENT 2

# STATE OF COLORADO

## EXECUTIVE CHAMBERS

136 State Capitol  
Denver, Colorado 80203-1792  
Phone (303) 866-2471



Roy Romer  
Governor

January 21, 1988

Mr. Samuel Chilk  
Secretary  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W., 11th Floor  
Washington, D.C. 20555

Dear Mr. Chilk:

A coalition of state and local governments has recently formed the Corridor Government Planning Group to assess and address issues surrounding the transportation of high-level waste to the repository mandated by the Nuclear Waste Policy Act and its recent amendments. The group currently is comprised of representatives from the states of Colorado, Nebraska, New Mexico and Wyoming, and a representative from Denver. With the recent NWPA amendments, membership is expected to increase dramatically.

I request participation by the group in the commission's High-Level Waste Licensing Support System Advisory Committee. I understand New Mexico Governor Garrey Curruthers has sent you a similar request. As noted by the commission in its notice of intent to form an advisory committee, governments potentially affected by the transportation of high-level waste have an interest in the rule-making. Participation by this group in the advisory committee will aid the commission in its ultimate goal: adoption of a rule that will not be challenged. If the corridor group is permitted to participate, it will appoint a spokesperson with sufficient authority to represent the views of its members.

Additionally, we request that the commission's negotiator arrange for travel for the group's spokesperson as has been done for other parties. At a time when many state and local governments are faced with deficits and budget cuts, governments are unable to incur additional costs for a national program.

1/25..To EDO to Prepare Response for Signature of Chairman..GPA/SLITP to Ack  
Date due: Feb 8...Cpys to: RF, EDO..88-0043

1A

Mr. Samuel Chilk  
January 21, 1988  
Page Two

The group views its participation in the advisory committee as essential to protect member interests and essential to the commission's ultimate goal.

I look forward to an early, positive response.

Sincerely,



Roy Romer  
Governor

RR:tjh

cc: Professor Howard S. Bellman  
Mr. Tim Mealey, Conservation Foundation  
Francis X. Cameron, Esq., Nuclear Regulatory Commission  
William Olmstead, Esq., Nuclear Regulatory Commission

**GARREY CARRUTHERS**  
Governor



**OFFICE of the GOVERNOR**  
State of New Mexico  
Santa Fe 87503

January 21, 1988

Mr. Samuel Chilk  
Secretary  
United States Nuclear  
Regulatory Commission  
Washington, D.C. 20555

RE: HLW Licensing Support  
System Advisory Committee

Dear Mr. Chilk:

A coalition of state and local governments have recently formed the Corridor Government Planning Group (the "Corridor Group") to assess and address the issues surrounding the transportation of high-level waste ("HLW") to the repository mandated by the Nuclear Waste Policy Act and its recent amendments ("NWPA"). The Corridor Group is currently comprised of representatives from the states of New Mexico, Colorado, Nebraska and Wyoming, and a representative from the city of Denver. With the recent NWPA amendments, the Corridor Group expects its membership to increase dramatically.

On behalf of the Corridor Group, I write to request participation by the Corridor Group in the Commission's HLW Licensing Support System Advisory Committee. As noted by the Commission in its Notice of Intent for Form an Advisory Committee, governments potentially affected by the transportation of high-level waste have an interest in the rulemaking. Participation by the Corridor Group in the Advisory Committee will aid the Commission in its ultimate goal: adoption of a rule that will not be challenged. If the Corridor Group is permitted to participate, it will appoint a spokesperson with sufficient authority to represent the views of the Corridor Group's members.

Additionally, we request that the Commission's negotiator arrange for travel funding for the Corridor Group's spokesperson, as he has for other parties. The Commission, in its Notice of Intent, erroneously assumed that parties

1/25..To EDO to Prepare Response for Signature of Chairman  
Date due Comm: Feb 8....Cpys to: RF, GPA/SLITP to Ack..88-0044

(11)

Mr. Samuel Chilk  
January 21, 1988  
Page -2-

would be able either to pay expenses through funds provided by the U.S. Department of Energy ("DOE") under NWPAs or to pay their own expenses. At a time when many state and local governments are faced with deficits, budget cuts and the retrenchment of employees, these governments are simply unable to incur additional costs for a national program. Without travel funding, it is unlikely that the Corridor Group's spokesperson would be able to participate in the Advisory Committee's meetings.

The Corridor Group views its participation in the Advisory Committee as essential to protect its members' interests and essential to the Commission's ultimate goal. I look forward to an early, positive response.

Sincerely,



Garrey Carruthers  
Governor

GG/RR/mav

cc: Professor Howard S. Bellman

Mr. Tim Mealey  
Conservation Foundation

William Olmstead, Esq.  
Nuclear Regulatory Commission

Francis X. Cameron, Esq.  
Nuclear Regulatory Commission

ATTACHMENT 3

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, 2.711, 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, 2.781, 2.785, 2.786, 2.787, 2.788, and 2.790.

2.1001 Definitions.

"ASCII File" means a text file stored on magnetic medium containing the American Standard Code for Information Interchange which represent characters and symbols.

"bibliographic header" means the minimum series of descriptive terms defined by the ISS Administrator that a potential party or party must give given to a document or ~~to~~ other material ~~as defined by the ISS Administrator.~~

"document" means any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic ~~in the possession or control of, and associated with the business of, a party or potential party.~~

"circulated draft" means a nonfinal document circulated for ~~substantive review 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 supervisory concurrence or signature which did not become a final document due to revisions by someone other than the original author and in which the original author non-concurred.~~

"Documentary material" means any material or other information that is 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. The scope of documentary material shall be guided by the topical guidelines in Regulatory Guide . . .

"Full header" means the series of descriptive terms and subject terms given to a document or other material as defined by the ISS Administrator.

"image" means a visual likeness of a document, presented on a paper copy, ~~microfilm~~ microform, or a bit-map on optical or magnetic disk.

"ISS Administrator" means the person or organizational unit within the U.S. Nuclear Regulatory Commission responsible for administration, management, and operation of the Licensing Support System. The ISS Administrator shall not be in any organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or is part of the same management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards.

"marginalia" means handwritten, printed, or other types of notations added to a document excluding underlining and highlighting.

"party" for purposes of this subpart means the license applicant, the NRC staff, and a person ~~or group~~ admitted, under section ~~2.1014~~ 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 party" 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 authority 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 nonfinal document that is not a circulated draft.

"Personal record" means a document in the possession of individual personnel of a party or potential party that was not required to be created or retained by the party or potential party, 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 party.

"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~~ documentary material on 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~~ documentary material of the license applicant and its contractors, and the documentary material of all other parties and potential parties to the high-level radioactive waste licensing proceeding, and their contractors. Access to the Licensing Support System by the parties and potential parties 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.

(a) 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, not privileged under section 2.1007 of this subpart. ~~Documentary material is any material or other information not otherwise privileged 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 logical guidelines established by the regulatory language to be specified.~~

(b) 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 its disapproval rights under Section 115 of the Nuclear Waste Policy Act, as amended, 41 U.S.C. 10135.

(c) This subpart shall not affect any independent right of a potential party or party to receive documents.

2.1004 Submission of material to the ISS.

(a) Subject to paragraphs (b), ~~(c) and (d)~~ (e), and (f) of this section, each potential party or party, with the exception of the license applicant, shall submit to the ISS Administrator an ASCII file, an image, and a bibliographic header—

(1) for all documentary material, including circulated drafts relating to a final decision but excluding preliminary drafts ~~(as defined in section 2.1001 of this subpart) or final documents~~, generated by, or at the direction of, ~~that~~ a potential party or party after the date on which such potential party or party is given access to the Licensing Support System pursuant to section ~~2.1008~~ 2.1009 of this subpart.

(2) for all documentary material including circulated drafts relating to a final decision but excluding preliminary drafts, ~~(as defined in section 2.1001 of this subpart) or final documents~~ generated by, or at the direction of, a potential party or party before the date on which such potential party or party was given access to the Licensing Support System pursuant to section ~~2.1008~~ 2.1009 of this subpart, and for which ASCII files are in the possession of such potential party or party.

(b) subject to the exclusions in section 2.1006 of this subpart, each potential party or party, with the exception of the license applicant, shall submit to the ISS Administrator an image, and a bibliographic header for all ~~other~~ documentary material ~~not submitted under paragraph (a) of this section~~ that is within the topical guidelines ~~established by the Regulatory Language~~ ~~to be specified~~ in Regulatory Guide \_\_\_\_.

(c) Subject to paragraphs (e) and (f) of this section, the license applicant shall submit to the ISS Administrator an ASCII file, an image, and a bibliographic header for all documentary material, including circulated drafts relating to a final decision but excluding preliminary drafts, generated by, or at the direction of the license applicant that is within the topical guidelines in Regulatory Guide \_\_\_\_.

(d) Potential parties, parties, and their contractors, must retain all comments on draft documents circulated for concurrence within their organization.

~~(c) (e) (1)~~ each potential party or party shall submit a bibliographic header for all ~~discoverable material~~ documentary 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 of~~

U.S. Nuclear Regulatory Commission vouchers for travel to the likely candidate site for a geologic repository, and vouchers for travel funded by the Nuclear Waste Fund established pursuant to section 302 of the Nuclear Waste Policy Act, 42 U.S.C. 10222.

(2) each party or potential party shall submit one bibliographic header that identifies vouchers for all travel specified in paragraph (c)(1) of this section.

(3) In addition to the bibliographic headers for the material specified in paragraph (c)(1) of this section, an image shall ~~not~~ be submitted for maps, photographs, and other graphic material.

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

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

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

~~(g)~~ (i) 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.

(j)(1) Docketing of the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall not be permitted under subpart J of this part unless the Director of the Office of Nuclear Material Safety and Safeguards has certified, at least six months in advance of the submission of the license application, that the license applicant has substantially complied with the provisions of this section.

(2)(i) The Director of the Office of Nuclear Material Safety and Safeguards shall evaluate the extent of the license applicant's compliance with the provisions of this section at six month intervals beginning six

months after the designation of the Pre-license Application Licensing Board under section 2.1011 of this subpart.

(ii) The Director of the Office of Nuclear Material Safety and Safeguards shall prepare a written report of his or her evaluation of license applicant compliance under paragraph (j)(i) of this section. The report shall include recommendations to the license applicant on the actions necessary to achieve substantial compliance pursuant to paragraph (j)(1) of this section.

(iii) Potential parties may submit comments on the report prepared pursuant to paragraph (j)(2)(ii) to the Director of the Office of Nuclear Material Safety and Safeguards.

(3) In the event that the Director of the Office of Nuclear Material Safety and Safeguards does not certify substantial compliance under paragraph (j)(1) of this section, the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall be submitted under subpart G of this part.

#### 2.1005 Amendments and additions.

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

(b) After the time period specified for verification in paragraph (a) of this section has expired, ~~potential party or a party~~ a submitter who desires to amend an alleged incorrect document, shall—

(1) submit the corrected version to the ISS Administrator for entry as a separate document; and

(2) submit a bibliographic header for the corrected version that identifies all revisions to the corrected version.

(c) The ISS Administrator shall ensure that the bibliographic header for the original document specifies that a corrected version is also in the Licensing Support System.

(d) (1) ~~A potential party or a party~~ A submitter shall submit any revised pages of a document in the Licensing Support System to the ISS Administrator for entry into the Licensing Support System as separate documents.

(2) The ISS Administrator shall ensure that the bibliographic header for the original document specifies that revisions have been entered into the Licensing Support System.

(e) Any document that has been incorrectly excluded from the Licensing Support System must be submitted to the ISS Administrator by the ~~potential party or party that generated the record~~ submitter responsible for the submission of the document within two days after its exclusion has been

identified unless some other time is approved by the Pre-License Application Licensing Board; provided, however, that the time for submittal under this paragraph will be stayed pending Pre-license Application Licensing Board action on a motion to extend the time of submittal.

2.1006 Exclusions.

The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to section 2.1004 of this subpart, or through derivative discovery pursuant to section 2.1020(i)(1) of this subpart—

- (a) official notice materials;
- (b) reference books and text books;
- (c) material pertaining exclusively to administration, such as material 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) junk mail;
- (f) reference cited in contractor reports that are generally available through other means.

~~2.1006~~ 2.1007 Privilege.

(a) Subject to the requirements in section 2.1004(d) of this subpart, 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 parties and parties. ~~Privileges available~~ In addition to Federal agencies, the deliberative process privilege will also be available to State and local government entities, and Indian Tribes.

(b) Any document for which a claim of privilege is asserted that is not upheld by the Pre-license Application Licensing Board shall be submitted by the party or potential party that asserted the claim, to the ISS Administrator for entry into the Licensing Support System, either into an open access file, or to a Licensing Board for entry into ~~the~~ a Protective Order file if a Licensing Board so directs under section ~~2.1010(b)(4)~~ 2.1011(b)(4) or section ~~2.1018(f)~~ 2.1019(f) of this subpart.

(c) Notwithstanding the availability of the deliberative process privilege under section 2.790(a(5) of this part, circulated drafts relating to a final decision, as defined in section 2.1001 of this subpart, or final documents not otherwise privileged, shall be submitted for entry into the Licensing Support System pursuant to section 2.1004(a) and 2.1004(c) of this subpart.

~~2.1007~~ 2.1008 Public Access.

(a)(1) Terminals for access to ~~bibliographic~~ full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of the U.S. Department of Energy, 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 ~~bibliographic~~ full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of the U.S. Nuclear Regulatory Commission, shall be provided at the headquarters Public Document Room 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.

(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, Nye County, Nevada, and Lincoln County, Nevada.

(4) Public access to the searchable full text and images of all the documents in the Licensing Support System, not privileged under section 2.1007, 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.

(b) Paper 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.

(c) Access to the Licensing Support System for potential parties and parties will be provided in the following manner—

(1) full text search capability through dial-up access from remote locations at the potential party's or party's expense;

(2) image access from remote locations at the potential party's or party's expense;

(3) the capability to electronically request a paper copy of a document at the time of search;

(4) generic fee waiver for the paper copy requested under paragraph (c)(3) of this section for potential parties or parties who meet the criteria in section 9.41 of this chapter.

(d) Documents submitted to the LSS Administrator for entry into the Licensing Support System shall not be considered as agency records of the LSS Administrator for purposes of the Freedom of Information Act (FOIA), 5 U.S.C.

552, and shall remain under the custody and control of the agency or organization that generated the documents and submitted them to the LSS Administrator. Requests for access to those documents pursuant to FOIA shall be transmitted to the federal agency that originated the document.

2.1009 Potential participants parties.

(a) A person ~~or group~~ may petition the Pre-license Application Licensing Board established pursuant to section 2.1010 of this subpart for access to the Licensing Support System.

(b) A petition must set forth with particularity the interest of the petitioner in gaining access to the Licensing Support System with particular reference to the following factors--

- (1) the factors set out in section 2.1015(c) of this subpart; or
- (2) the criteria in section 2.715(c) of this part; or
- (3) the topical guidelines in Regulatory Guide . . . .

~~(b) (c) (1)~~ The Pre-License Application Licensing Board shall, in ruling on a petition for access, consider ~~the factors set forth in paragraph (c) of section 2.1015 of this subpart and section 2.715(c) of this part.~~

- (i) the factors set out in section 2.1015(c) of this subpart;
- (ii) the criteria in section 2.715(c) of this part;
- (iii) the topical guidelines in Regulatory Guide . . . .

(2) To the extent that the Pre-license Application Licensing Board's decision to grant access to the Licensing Support System is based on paragraph (c)(1)(i) of this section, a decision to grant access under paragraph (c)(1) of this section shall constitute a presumptive determination that a person filing a petition for leave to intervene or request a hearing under section 2.1015 of this subpart, has made the requisite showing of interest under section 2.1015(c).

~~(c) (d)~~ 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 2.1010 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 effect on the State's exercise of its discretionary rights under section 113 of the Nuclear Waste Policy Act, as amended, 41 U.S.C. 10113.~~

~~(e) Denial of access may be appealed pursuant to section 2.1013 of this subpart.~~



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

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

(4) (5) 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 potential party or 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) Upon a final determination that the material is not relevant, privileged, proprietary, or safeguards information, or is otherwise exempt from disclosure, the potential participant who asserted the claim of withholding must submit the document to the LSS Administrator within ~~ten days~~ two days for entry into the Licensing Support System.

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

2/10/11 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 may represent 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 premises of any U.S. Department of Energy building or facility or that of its contractors;

(d) The ISS 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 sections 2.1004(a), (b), and (c) 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, quality, and availability of Licensing Support System documents and images;

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

////(7) Preparing, distributing, operating, 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 passwords, 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 or 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

////(12) Other duties as specified in this subpart.

(a) The Licensing Support System shall be operated by the ISS Administrator.

(b) The U.S. Department of Energy is responsible for the design and development of the computer system necessary to implement the Licensing Support System and for all procurements of computer hardware and software, including the follow on redesign and procurement of equipment to maintain the system.

(c) (1) The Licensing Support System, described in section 2.1002 of this subpart, shall not be part of any computer system that is controlled by any party or potential party to the high-level waste licensing proceeding, including the U.S. Department of Energy or its contractors, or that is physically located on the premises of any party or potential party to the proceeding, including the U.S. Department of Energy or that of its contractors.

(2) The computer system may be partitioned so that the U.S. Department of Energy may use it for its own records management system independent of the Licensing Support System.

(d) The ISS Administrator is responsible for routine operation of the Licensing Support System, including--

(1) receiving and entering the documentary material specified in section 2.1004 of this subpart into the Licensing Support System in the appropriate format - searchable full text, bibliographic headers, and/or image - and eliminating duplicates;

(2) establishing back-up, quality, and availability of Licensing Support System documents and images;

(3) maintaining security for the Licensing Support System data base, including assigning user password security codes;

(4) distributing, operating, and maintaining appropriate software for the Licensing Support System;

(5) maintaining the thesaurus and authority tables for the Licensing Support System;

(6) establishing and implementing a training program for Licensing Support System potential users;

(7) providing support staff to assist users in searching the Licensing Support System;

(8) other duties as specified in this subpart.

(e)(1) The ISS Administrator shall establish an ISS Advisory Review Board comprised of representatives of each party or potential party to the HLW licensing proceeding.

(2) The ISS Advisory Review Board shall advise--

(i) the U.S. Department of Energy on policy considerations pertaining to the design and development of the computer system necessary to implement the Licensing Support System;

(ii) the ISS Administrator on the implementation of the Licensing Support System.

(3) The ISS Administrator, pursuant to section 2.2012(a) of this subpart, and the U.S. Department of Energy, pursuant to section 2.2012(b) of this subpart, as appropriate, will implement advice from the Review Board, including--

(i) establishing format standards for the submission of information to the Licensing Support System by the parties or potential parties, such as ASCII files, bibliographic headers, and images;

(ii) establishing the procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) establishing access protocols for raw data, field notes, and other items covered by section 2.1004(e) of this subpart;

(iv) establishing a thesaurus, authority tables, and duplication elimination process for the Licensing Support System;

(v) other duties as specified in this subpart.

~~2/10/77~~ 2.1013 Compliance.

(a) In addition to the requirements of section 2.101(f) 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 under this subpart, if the license applicant ~~has complied~~ is not in substantial and timely compliance with section 2.1004 of this part.

(b) A person or group including potential parties granted access to the Licensing Support System under section 2.1008 of this subpart, shall not be granted party status under section 2.1014 of this part, or status as an interested governmental participant under section 2.715(c) of this part, if they cannot demonstrate substantial and timely 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 2.1014 or section 2.715(c) of this part.

(c) The Licensing Board established for the high-level waste licensing proceeding, hereinafter the "Hearing Licensing Board," shall not make a finding of substantial and timely compliance pursuant to paragraph (b) of this subpart for any person or group who is not in compliance with all applicable orders of the Pre-License Application Licensing Board established pursuant to section 2.1010 of this subpart.

(d) Access to the Licensing Support System may be terminated for any potential party or party who is in noncompliance with any applicable order of the Pre-license Application Licensing Board or the Hearing Licensing Board.

~~2/10/77~~ 2.1014 ISS use during the adjudicatory proceeding.

(a) (1) Pursuant to section 2.702, the Secretary will maintain the official 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 docketing 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 ISS Administrator shall

establish a file within the Licensing Support System to contain a duplicate of the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or for material that is not suitable for entry in searchable full text, by header or image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been entered into the Licensing Support System before ~~the hearing commences~~ the commencement of that portion of the hearing in which the exhibit will be offered. 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 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. ~~Documents may be entered into the Licensing Support System by the hearing staff before the hearing commences.~~

(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, the LSS Administrator, 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 the party or its designated representative. 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 ("delivery receipt") ; or
- (ii) the affidavit of the party making the service; or
- (iii) the certificate of counsel.

(5) One signed paper copy of each filing shall be served promptly on the Secretary by regular mail pursuant to the requirements of sections 2.708 and 2.701 of this part.

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

(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~~ paper copy, and images thereof, will also be permitted ~~during~~ at the hearing.

~~2.101A~~ 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 alleges to have an interest;~~

~~(iii) (ii) 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) (iii) reference to the specific portions of documents in the Licensing Support System that provide a basis for the contention; and~~

~~(yy)~~ (iv) the specific regulatory or statutory requirement that needs to be satisfied.

(3) Any petitioner who fails to satisfy paragraphs (a)(2)(ii), (iii), and (iv) of this section with respect to at least one contention shall not be permitted to participate as a party.

~~(zy)~~ (4) Any ~~person who has been admitted as a party pursuant to this section~~ may amend ~~his~~ its petition for leave to intervene with respect to the contentions specified in paragraph ~~(a)(2)(ii)~~ (a)(2)(ii) 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) Subject to paragraph (a)(3) of this section, 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, an affected unit of local government as defined in section 2(31) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10101, 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 the petitioner's 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.

~~2.1015~~ 2.1016 Appeals.

(a) No appeals from any board order or decision issued under this subpart are permitted, except as prescribed in paragraphs (b), (c), (d), (e), and (f).

(b) A notice of appeal from (i) a Pre-application Licensing Board order issued pursuant to section ~~2.1010~~ 2.1011 of this subpart, (ii) a Licensing Board First or Second Prehearing Conference Order issued pursuant to section 2.1020 or 2.1021 of this subpart, or (iii) a Licensing Board order granting or denying a motion for summary disposition issued in accordance with section 2.749 of subpart G, shall be filed with the Atomic Safety and Licensing Appeal Board within ten (10) days after service of the order. A supporting brief shall accompany the notice of appeal. Any other party or potential party may file a brief in opposition to the appeal within ten (10) days after service of the appeal.

(c) Appeals from a Licensing Board initial decision or partial initial decision shall be filed and briefed before the Atomic Safety and Licensing Appeal Board in accordance with the requirements of section 2.762 of subpart G.

(d) When, in the judgment of a board, prompt appellate review of an order not immediately appealable under paragraph (b) of this section is necessary to prevent detriment to the public interest or unusual delay or expense, the board may refer the ruling promptly to the Appeal Board or Commission, as appropriate, and shall provide notice of such referral to the parties or potential parties. Pursuant to section 2.718(i) of subpart G, the parties or potential parties may also seek directed certification of rulings not immediately appealable under paragraph (b) of this section.

(e) A party or potential party may seek Commission review of any Appeal Board decision or order issued under this section ~~as provided~~ in accordance with the procedures in section 2.786(b) of subpart G.

(f) Unless otherwise ordered, the filing of an appeal, petition for review, or request for certification of a ruling shall not stay the proceeding or extend the time for the performance of any act.

2/10/16 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 2.1013(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.

(f) Where the motion in question is a motion to compel discovery under section 2.720(h)(2) or section ~~2/10/18/19~~ 2.1019(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 unless the conference has been transcribed. 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.

2/10/17 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.

~~2.1018~~ 2.1019 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 2.1019 of this subpart; and requests for admission pursuant to section 2.742 of this part.

(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 its 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 it 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 its 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 the witness is expected to testify, and the substance of the witness's testimony.

(2) A party is under a duty seasonably to amend a prior response if it obtains information upon the basis of which (i) it knows that the response was incorrect when made, or (ii) it 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 five 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.

~~2/1/19~~ 2.1020 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. Depositions may be conducted by telephone or by video teleconference.

(c) The deponent shall be sworn or shall affirm before any questions are put to him or her. 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 the deponent 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 transmit the deposition to the ISS Administrator.

(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 its 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 the categories of documents set forth in paragraph (i)(2)(i) of this section, 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) (A) The following material is excluded from initial entry into the Licensing Support System, but is subject to derivative discovery under paragraph (i) (1) of this section—

- (A) (i) personal records;
- (B) (ii) travel vouchers;
- (C) (iii) speeches;
- (D) (iv) preliminary drafts;
- (v) marginalia.

(ii) The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to section 2.1004 of this part, or through derivative discovery pursuant to paragraph (i)(1) of this section:

- ////////// (A) Official notice materials;
- ////////// (B) Reference books and text books;
- ////////// (C) Material pertaining exclusively to administration, such as material 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 non-fuel waste;
- ////////// (D) Press clippings and press releases;
- ////////// (E) Bank fail;

//////////~~reference cited in contractor reports that are generally~~  
//////////~~available through other means~~

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

(4) The deponent shall bring a paper 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.

(5) 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 ISS.

(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.

~~2/10/20~~ 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 formal and informal conferences among the parties, including teleconferences, to the extent that the presiding officer considers that such a conference would expedite the proceeding.

(c) A prehearing conference held pursuant to this section shall be stenographically reported and may be conducted by teleconference.

(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~~ 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 2.1014(a)(3) 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~~ 2.1023 Immediate effectiveness of initial decision.

/// KAY /Pyaqeyt/ as /p'rovi'adea/ i'n /pa'ra'grafa'n/ /ke'y/ o'i /y'u'is/ /se'ct'i'onu/ /o'i/ as /o't'yey'i'y'se  
 o't'ade'ya /by/ y'ue /Qo'mu'is's'i'on/ i'n /s'p'as'i'AI /ci'ro'v'as't'ay'v'as's/ /s'u/ i'n'i'y'e'AI /a'ce'is'i'on  
 a'i't'e'ye'i'ng/ y'ue /i's's'ay'v'as' /o't/ s'u'ey'v'as't'e'i'on/ a'u't'y'o'r'i't'e'i'on/ pa'rs'a'v'e  
 k'o/ se'ct'i'onu/ s'o/ z'i/ o'i /y'u'is/ /q'u'a't'e'r/ s'u'v'e'i'ct'i'ye /i'n't'e'd'i'ale'i'y/ a'p'o'n /i's's'ay'v'as'  
 a'u'is's'as/ y'ue /o't's'e'i'ale'i'ng/ o'i'f'i'ce'r /f'i'y'as /y'v'e /g'o'o'd /ca'u'se /v'as /p'es'u/ s'u'v'o'n /by /a/ /pa'r't'y  
 v'o'y /y'ue /i'n'i't'i'AI /a'ce'is'i'on/ /s'u'v'o'i'q' /v'o't /p'es'o't'e /i'n't'e'd'i'ale'i'y /e'i'f'e'ct'i'ye / /s'u'o'j'ce't  
 k'o/ y'ue /y'e'i's'u /t'he'r'o'i' s'u'v'a /s'u't'y'e'r /a'ce'is'i'on /by /y'ue /Qo'mu'is's'i'on/ v'o'y'o'n /v'o't'ic'o' /o'i  
 a'p'o's't'i' /f'i'le'a /by /s'u'v' /pa'r't'y /pa'rs'a'v'e /k'o/ se'ct'i'onu/ z'i/ s'o/ o'i /y'u'is/ /pa'r't'y /o't/ a'p'o'n /i't's  
 o't'y' /v'o't'i'on/

/// Oby /Pyaqeyt/ as /p'rovi'adea/ i'n /pa'ra'grafa'n/ /ke'y/ o'i /y'u'is/ /se'ct'i'onu/ /o't/ as // o't'yey'i'y'se  
 o't'ade'ya /by/ y'ue /Qo'mu'is's'i'on/ i'n /s'p'as'i'AI /ci'ro'v'as't'ay'v'as's/ / y'ue /D'i't'e'ct'o'r/ o'i /v'ue'i'ce'v'  
 v'a't'e'r'AI /s'a'i'e't'y /s'u'v'a /s'a'i'eg'u'a'r'as' / /v'o't'v'i't'y's'e'v'v'e'i'ng/ y'ue /f'i'i'ng/ o'i /a/ /v'o't'ic'o' /o'i  
 a'p'o's't'i' / /s'u'v'o'i' /i's's'as' /a/ /o'v'as't'ay'v'as't'e'i'on/ a'u't'y'o'r'i't'e'i'on/ pa'rs'a'v'e /k'o/ se'ct'i'onu/ s'o/ z'i  
 o'i /y'u'is/ /q'u'a't'e'r/ /o't/ s'u'ey'v'as't'e'i'on/ a'u't'y'o'r'i't'e'i'on /by /s'u/ i'n'i'y'e'AI /a'ce'is'i'onu/  
 v'i't'y'i'n /k'e'm /AI'j/ /q'ay's /f'i'y'o'n /y'ue /a'v'e /o'i /i's's'ay'v'as' /o'i/ y'ue /a'ce'is'i'onu/

/// Ke'y /Qo'mu'is's'i'onu/ /AI'j/ /P'es'e'r'y'ing/ y'ue /e'o'k'e'r/ k'o/ s't'e'p /i'n /s't/ s'u'v' /e'a'r'i't'e'r/ /y'ue // y'ue  
 Qo'mu'is's'i'on /v'i't'i' /v'o'p' /r'e'ce'iv'e /o'i /y'ue /f'i'ce'ye'ing /Bo'a'r'd /a'ce'is'i'on /a'u't'y'o'r'i't'e'i'ng  
 i's's'ay'v'as' /o'i /a/ /o'v'as't'ay'v'as't'e'i'on /a'u't'y'o'r'i't'e'i'on /pa'rs'a'v'e /k'o/ se'ct'i'onu/ s'o/ z'i/ o'i /y'u'is  
 q'u'a't'e'r / /r'e'y'ic'u /y'ue /v'a't'e'r /o'n /i't's /o't'y' /v'o't'i'on /k'o/ a'ce'v'as't'i'ye /v'o't'e'q'u'e'r /k'o/ s't'ay /y'ue  
 e'i'f'e'ct'i'ye'v'as's' /o'i /y'ue // a'ce'is'i'onu // /f' /o'v'as't'ay'v'as't'e'i'on /a'u't'y'o'r'i't'e'i'on /a'ce'is'i'on /v'i't'i'y  
 k'e /s't'ay'v'as' /by /y'ue /Qo'mu'is's'i'onu / /i' /i' /a'ce'v'as't'i'ye'v' /y'v'a't'e /i't' /i's /i'n /y'ue /v'o'b'i't'e  
 i'n't'e'r'e's't' /k'o/ a'o/ s'o/ /v'es's'e'a /o'n /a /o'v'as't'ay'v'as't'e'i'on /o'i /y'ue /g'u'v'y'ing /o'i /y'ue /s'u'v'o's't'ay'v'as'  
 i's's'as'e / /y'ue /i't'e'i' /v'o'o'd /y'v'a't'e /i't' /v'as' /v'es'e'y /r'e's'o'i'y'v'as' /i'n't'o'r'e'ct'i'y /v'e'i'o'u' / /y'ue /a'ce'q'u'e  
 k'o/ v'o'i't'o'n /o'o't'e's't' /r'e's'o'i'y't'e'i'on /o'i /y'ue /i's's'as'e /v'o'b'i't'e /v'e /p'r'e'j'i'v'a'i't'e'a' /v'o'y /o'v'as't'ay'v'as't'e'i'on  
 p'e'y'v'a'i'ng /r'e'y'ic'u / /s'u'v'a /o't'y'e'r /r'e'i'ey'v'e /v'o'b'i't'e /i'n't'e'r'e's't' /f'a'c't'o'r's /

/// AI'j /y'ue /v'a't'e'ic's' /v'a'y /f'i'ng /p'r'i't'e' /o'v'as't'ay'v'as' /v'i't'y'n /y'ue /Qo'mu'is's'i'on /v'o'i't'e'i'ng /o'u't  
 v'a't'e'r's /v'o'i't'o'n /i'n /y'ue' /v'i't'e'u' /v'e't'y'v'a'i'n /k'o/ y'ue /i'n't'e'a'i't'e' /e'i'f'e'ct'i'y'q'u'e's's' /i's's'as'e /  
 v'o/ v'e /o'v'as't'ay'v'as't'e'u' /v'a'q'u' /o'v'as't'ay'v'as' /v'as't' /v'e /r'e's'e'i'v'as' /v'i't'y'n /I'o/ /q'ay's /o'i /y'ue /Bo'a'r'd  
 a'ce'is'i'onu // v'o'k'e'y'e'r / /y'ue /Qo'mu'is's'i'on /v'a'y /a'i's't'q'u'e' /v'i't'y'n /o'v'as't'ay'v'as' /v'o'y /s'o/ /a'v' /i's'i'ng  
 y'ue /v'a't'e'ic's' // /v'o' /e'v'e'v'as't'e' /s't'ay /s'u'v'o'i' /v'e /i's's'as'e'a /v'i't'y'v'o't'e /g'u'i'y'ing /y'ue /a'i'f'e'ct'e'a  
 p'a'r't'e's' /s'u'v' /o'p'o'r't'y'u'i't'y /k'o/ v'e /v'es'v'a' /

/// AI'j /y'ue /Qo'mu'is's'i'on /i'n't'e'v'as' /k'o /i's's'as'e /a /s't'ay /a'ce'is'i'on /v'i't'y'n /z'o/ /q'ay's /o'i  
 r'e's'e'i't'e' /o'i /y'ue /f'i'ce'ye'ing /Bo'a'r'd / /a'ce'is'i'onu // /y'ue /f'i'ce'ye'ing /Bo'a'r'd / /i'n'i'y'e'AI  
 a'ce'is'i'on /v'i't'i' /v'e /o'v'as't'ay'v'as't'e'u' /s't'ay'v'as' /v'e'v'a'i'ng /y'ue /Qo'mu'is's'i'on /s/ /a'ce'is'i'onu /

/// KAY /I'n /s'u'v'v'o'v'e'i'ng /a/ s't'ay /a'ce'is'i'onu / y'ue /Qo'mu'is's'i'on /v'a'y /AI'j'o'u /y'ue /p'r'o'p'o's'e'i'ng  
 k'o/ /v'o'n /i't's /o'v'a'i'v'a't'y /o'v'as't'ay'v'as' /o't /g'u'i'v'e /i'n's't'ay'v'as't'e'i'on's /as /k'o/ y'ue /v'a't'ay't'e /v'a'v'e'i'ng /o'i  
 y'ue /p'r'o'p'o's'e'i'ng /AI'j'o'r /e'v'a't'o'i'e' / /i't' /v'a'y /a'i't'e'r /y'ue /v'o'v'e'AI /Bo'a'r'd /k'o/ /r'e'y'ic'u /y'ue  
 v'e't'y'as' /o'i /v'a't'e'i'q'u'a'r' /i's's'as'es /i'n /e'v'e'a'i't'e'a /f'a's'h'i'onu / /v'a't'y'i's'u /v'o'i'q'u' /g'u'a'd'ay'v'as'  
 v'i't'y'n /r'e's'e'q'u'e' /k'o /v'a't'e'i'q'u'a'r' /i's's'as'es / /o't /a'ce'is'i'on /k'o /r'e'y'ic'u /y'ue /v'e't'y'as' /o'i  
 v'a't'e'i'q'u'a'r' /i's's'as'es / /i't's'e'q'u'e' / /v'o'y'v'as's'ing /y'ue /v'o'v'e'AI /Bo'a'r'd / / /f'a't'y'v'e'v'o't'e' / /y'ue  
 Qo'mu'is's'i'on /v'a'y /i'n /a /v'a't'e'i'q'u'a'r' /e'v'as' /a'ce'v'as't'i'ye /y'v'a't'e /o'v'as't'ay'v'as' /v'i't'y'n /e'v'i's'i'ng  
 r'e'g'u'l'a'i't'o'n's /s'u'v'a /v'o'i't'e's' /v'a'y /v'o't' // /I'o't'g'e'r /v'e /s'u'f'e'i'c'i'e'n't' /k'o /v'a't'ay't'e /a'p'e'r'o'y'AI  
 o'i /a /i't'e'v'as' /v'a't'o'i'c'a'i't'o'n /s'u'v'a /v'a'y /a'i't'e'r /y'v'o's'e' /r'e'g'u'l'a'i't'o'n's /s'u'v'a /v'o'i't'e's' /

/// KAY /v'o'i't'e's' /y'ue /Qo'mu'is's'i'on /o't'y'e'r'y'as' /e'v'o'i'c'a'i't'y /s'o/ /a'i't'e'ct's' /i'n /i't's /i'n't'e'd'i'ale  
 e'i'f'e'ct'i'y'q'u'e's's' /a'ce'v'as't'i'v'a'i't'o'n /v'o /o'v'as't'ay'v'as' /v'a'v'e' /i'n /y'ue /o'v'as't'ay'v'as' /o'i /y'ue /o't'i'y'i'on /o't  
 s't'ay'v'as't'e' /r'e'f'i'q'u'e'i'ng /y'v'a't'e /a'ce'v'as't'i'v'a'i't'o'n /i's' /k'o /v'e /g'u'i'v'e'n /s'u'v' /v'e'i'q'u'e' /by /y'ue

Nuclear Safety and Licensing Appeal Board in its consideration of an appeal on the merits pursuant to sections 2.762 and 2.788 of this part or in any subsequent formal adjudication. The Commission's effectiveness determination is entirely without prejudice to such consideration in subsequent proceedings.

(a) Pending review and final decision by the Commission, an initial decision resolving all issues before the presiding officer in favor of issuance or amendment of a construction authorization pursuant to section 60.31 of this chapter or a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to section 60.41 of this chapter, will be immediately effective upon issuance except --

(1) As provided in any order issued in accordance with section 2.788 of this part that stays the effectiveness of an initial decision; or

(2) As otherwise provided by the Commission in special circumstances.

(b) The Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or pendency of an appeal pursuant to section 2.762 of this part or a petition for review pursuant to section 2.786 of this part, promptly shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area, or amendments thereto, following an initial decision resolving all issues before the presiding officer in favor of the licensing action upon making the appropriate licensing findings, except--

(1) As provided in paragraph (c) of this section; or

(2) As provided in any order issued in accordance with section 2.788 of this part that stays the effectiveness of an initial decision; or

(3) As otherwise provided by the Commission in special circumstances.

(c) (1) Before the Director of Nuclear Material Safety and Safeguards may issue a construction authorization or a license to receive and possess waste at a geologic repository operations area in accordance with paragraph (c) (2) of this section, the Commission, in the exercise of its supervisory authority over agency proceedings, shall undertake and complete a supervisory examination of those issues contested in the proceeding before the Licensing Board to consider whether there is any significant basis for doubting that the facility will be operated with adequate protection of the public health and safety, and whether the Commission should take action to suspend or to otherwise condition the effectiveness of a Licensing Board decision that resolves contested issues in a proceeding in favor of issuing a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area. This supervisory examination is not part of the adjudicatory proceeding and the parties to the proceeding have no right to file pleadings with the Commission with regard to this supervisory examination. The Commission shall notify the

Director in writing when its supervisory examination conducted in accordance with this paragraph has been completed.

(2) Before the Director of Nuclear Material Safety and Safeguards issues a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area, the Commission shall review those issues that have not been contested in the proceeding before the Licensing Board but about which the Director must make appropriate findings prior to the issuance of such a license. The Director shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area only after written notification from the Commission of its completion of its review under this paragraph and of its determination that it is appropriate for the Director to issue such a license. This Commission review of uncontested issues is not part of the adjudicatory proceeding and the parties to the proceeding have no right to file pleadings with the Commission concerning this review.

(3) No suspension of the effectiveness of a Licensing Board's initial decision or postponement of the Director's issuance of a license that results from a Commission supervisory examination of contested issues under paragraph (c)(1) of this section or a review of uncontested issues under paragraph (c)(2) of this section will be entered except in writing with a statement of the reasons. Such suspension or postponement will be limited to such period as is necessary for the Committee to resolve the matters at issue. If the supervisory examination results in a suspension of the effectiveness of the Licensing Board's initial decision under paragraph (c)(1) of this section, the Commission will take review of the decision sua sponte and further proceedings relative to the contested matters at issue will be in accordance with procedures for participation by the applicant, the NRC staff, or other parties to the Licensing Board proceeding established by the Commission in its written statement of reasons. If a postponement results from a review under paragraph (c)(2) of this section, comments on the uncontested matters at issue may be filed by the applicant within ten (10) days of service of the Commission's written statement.

#### 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~~ adding--

With the exception of license applications docketed under Subpart J of this part

2.743(f) is amended by adding:

DRAFT RULE DISCUSSED AT MEETING

HANDOUT AT May 17 meeting  
TO PDR 6/21

(a)(2)(ii) reference to specific documentary material that provide a basis for the contention; and

(a)(4) Any party may amend its contentions specified in paragraph (a)(2)(ii) of this section. The presiding officer shall rule on any petition to amend based on a balancing of the factors specified in paragraph (a)(1) of this section. Petitions to amend on the basis of information or issues raised in the Safety Evaluation Report issued by the NRC staff may be made no later than 40 days after the issuance of the SER. Any petition to amend contentions that are filed after that time will in addition to the factors specified in (a)(1) of this section include a showing that a significant safety or environmental issue is involved.

2.2011 ISS Management and Administration.

(a) The Licensing Support System shall be administered by the ISS Administrator who will be designated within sixty days after the effective date of the rule.

(b)(1) Consistent with the requirements in this subpart, the U.S. Department of Energy shall be responsible for the design and development of the computer system necessary to implement the Licensing Support System including the procurement of computer hardware and software, and, with the concurrence of the ISS Administrator, the follow-on redesign and procurement of equipment necessary to maintain the Licensing Support System.

(2) The U.S. Department of Energy shall implement consensus advice from the ISS Advisory Review Panel under paragraph (e) of this section that is consistent with the requirements of this subpart.

(c)(1) The Licensing Support System, described in section 2.1002, shall not be part of any computer system that is controlled by any party or potential party to the high-level waste licensing proceeding, including the U.S. Department of Energy and its contractors, or that is physically located on the premises of any party or potential party to the high-level waste proceeding, including the U.S. Department of Energy and that of its contractors.

(2) Nothing in this subpart shall preclude the U.S. Department of Energy or any other potential party or party from using the Licensing Support System computer facility for a records management system independent of the Licensing Support System.

(d) The ISS Administrator shall be responsible for the administration of the Licensing Support System, including the responsibility to--

(1) provide the necessary personnel, materials, and services for operation and maintenance of the ISS;

(2) identify and recommend to the U.S. Department of Energy any redesign and procurement actions necessary to ensure that ISS design and operation meets the objectives of this subpart;

(3) concur on any redesign and related procurement performed by the U.S. Department of Energy under paragraph (b) of this section;

(4) implement the consensus advice of the ISS Advisory Review Panel under paragraph (e) of this section that is consistent with the requirements of this subpart;

(5) evaluate and certify compliance with the requirements of this subpart under section 2.1003(j) and section 2.1012(a) of this subpart;

(6) ensure ISS availability and the integrity of the ISS data base;

(7) receive and enter the documentary material specified in section 2.1003 of this subpart into the Licensing Support System in the appropriate format - searchable full text, bibliographic headers, and/or image;

(8) eliminate duplicate documents;

- (9) maintain security for the Licensing Support System data base, including assigning user password security codes;
- (10) distribute, operate, and maintain appropriate software for the Licensing Support System;
- (11) maintain the thesaurus and authority tables for the Licensing Support System;
- (12) establish and implement a training program for Licensing Support System users;
- (13) provide support staff to assist users in searching the Licensing Support System;
- (14) other duties as specified in this subpart or necessary for ISS operation and maintenance.

(e) (1) The ISS Administrator shall establish an ISS Advisory Review Panel comprised of representatives from the parties and potential parties within sixty days after designation of the ISS Administrator pursuant to paragraph (a) of this section.

(2) The ISS Advisory Review Panel shall advise—

- (i) the U.S. Department of Energy on the design and development of the computer system necessary to implement the Licensing Support System under paragraph (b) of this section; and
- (ii) the ISS Administrator on the operation and maintenance of the Licensing Support System under paragraph (d) of this section.

(3) The advice of the ISS Advisory review Panel shall include—

- (i) establishing format standards for the submission of information to the Licensing Support System by the parties or potential parties, such as ASCII files, bibliographic headers, and images;
- (ii) establishing the procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;
- (iii) establishing access protocols for raw data, field notes, and other items covered by section 2.1003(c) of this subpart;
- (iv) establishing a thesaurus, authority tables, and duplication elimination process for the Licensing Support System;
- (v) establishing reasonable requirements for field definition, retrieval, display, image delivery, query response, and "user friendly" usage;

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, 2.711, 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, 2.781, 2.785, 2.786, 2.787, 2.788, and 2.790.

2.1001 Definitions.

"ASCII File" means a text file stored on magnetic medium containing the American Standard Code for Information Interchange which represent characters and symbols.

SUBMIT WITH

FIELDS

"bibliographic header" means the minimum series of descriptive terms defined by the ISS Administrator that a potential party or party must have given on a document or other material as derived by the ISS Administrator. THE BIBLIOGRAPHIC HEADER FIELDS ARE A SUBSET OF THE FIELDS IN THE FULL HEADER.

"document" means any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic IN THE POSSESSION OR CONTROL OF AND ASSOCIATED WITH THE BUSINESS OF A PARTY OR POTENTIAL PARTY.

"circulated draft" means a nonfinal document circulated for ADMINISTRATIVE REVIEW/PURPOSES OF THE ORGANIZATIONAL UNIT WHERE THE DOCUMENT WAS CREATED FOR EXAMPLE, THE BRANCH UNIT WITHIN THE U.S. NUCLEAR REGULATORY COMMISSION, BY THE PARTY OR OF ANY HIGHER ORGANIZATIONAL UNIT SUPERVISORY CONCURRENCE OR SIGNATURE WHICH DID NOT BECOME A FINAL DOCUMENT DUE TO REVISIONS BY SOMEONE OTHER THAN THE ORIGINAL AUTHOR AND IN WHICH THE ORIGINAL AUTHOR NON-CONCURRED. (FOR OTHERS ON THE CONCURRENCE CHAIN HAVE)

"Documentary material" means any material or other information that is 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. The scope of documentary material shall be guided by the topical guidelines in Regulatory Guide . . .

"Full header" means the series of descriptive terms and subject terms given to a document or other material as defined by the ISS Administrator.

"image" means a visual likeness of a document, presented on a paper copy, microform, or a bit-map on optical or magnetic disk.

"ISS Administrator" means the person or organizational unit within the U.S. Nuclear Regulatory Commission responsible for administration, management, and operation of the Licensing Support System. The ISS Administrator shall not be in any organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or is part of the management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards.

"marginalia" means handwritten, printed, or other types of notations added to a document excluding underlining and highlighting.

"party" <sup>the host state</sup> for purposes of this subpart means the license applicant, the NRC staff, and a person or group admitted, under section 2.7014 ~~2.1015~~ <sup>2.1014</sup> 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. "PARTY" EXCLUDES THE ISS ADMINISTRATOR

"potential party" 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 authority of

←  
I WANT CHANGE TO REFLECT THE WDG DEFINITION

2.1010 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 nonfinal document that is not a circulated draft.

"Personal record" means a document in the possession of individual personnel of a party or potential party that was not required to be created or retained by the party or potential party, 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 party.

"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.

(a) <sup>CONCERNING</sup> The Licensing Support System is an electronic information management system containing the ~~records, documents, and other data relevant to~~ documentary material ~~and~~ 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~~ documentary material of the license applicant and its contractors, and the documentary material of all other parties and potential parties to the high-level radioactive waste licensing proceeding, and their contractors. Access to the Licensing Support System by the parties and potential parties 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.~~

(b) ~~(a)~~ 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, not privileged under section 2.1007 of this subpart. ~~Documentary material is any material or other information not otherwise privileged 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 typical guidelines established by the legal profession or language to be specified.~~

(c) <sup>HOST STATE</sup> ~~(a)~~ 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

42

State's exercise of its disapproval rights under Section 115 of the Nuclear Waste Policy Act, as amended, 49 U.S.C. 10135.

(d) This subpart shall not affect any independent right of a potential party or party to receive documents.

2-1003-2-1004 Submission of material to the ISS.

(a) Subject to paragraphs (b), (c), (d), (e), and (f) of this section, each potential party or party, with the exception of the license applicant, shall submit to the ISS Administrator an ASCII file, an image, and a bibliographic header—

documents  
intentionally

(1) for all documentary material, including circulated drafts ~~relating to a final decision~~ but excluding preliminary drafts ~~as defined in section 2.1001 of this subpart or final documents~~, generated by, or at the direction of, ~~that~~ a potential party or party after the date on which such potential party or party is given access to the Licensing Support System pursuant to section 2.1008 ~~2-1009~~ of this subpart.

OF A FINAL DOCUMENT OR ON WHICH A DECISION HAS BEEN MADE NOT TO FINALIZE THE DOCUMENT

(2) for all documentary material including circulated drafts ~~relating to a final decision~~ but excluding preliminary drafts, ~~as defined in section 2.1001 of this subpart or final documents~~ generated by, or at the direction of, a potential party or party before the date on which such potential party or party was given access to the Licensing Support System pursuant to section 2.1008 ~~2-1009~~ of this subpart, and for which ASCII files are in the possession of such potential party or party.

copy

(b) subject to the exclusions in section 2.1006 of this subpart, each potential party or party, with the exception of the license applicant, shall submit to the ISS Administrator an image, and a bibliographic header for all ~~other~~ documentary material, ~~not submitted under paragraph (a) of this section that is within the topical guidelines specified in Regulatory Guide~~ ~~as specified in Regulatory Guide~~.

2.1005

(c) Subject to paragraphs (e) and (f) of this section, the license applicant shall submit to the ISS Administrator an ASCII file, an image, and a bibliographic header for all documentary material, including circulated drafts relating to a final decision but excluding preliminary drafts, generated by, or at the direction of the license applicant, that is within the topical guidelines in Regulatory Guide.

(d) Potential parties, parties, and their contractors, must retain all comments on draft documents circulated for concurrence within their organization.

WHICH INCLUDES THE LOCATION OF THE INFORMATION,

(e) (1) each potential party or party shall submit a bibliographic header for all ~~discoverable material~~ documentary 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~~

FOR EXAMPLE

U.S. Nuclear Regulatory Commission vouchers for travel to the site for a geologic repository, and vouchers for travel funded by the Nuclear Waste Fund established pursuant to section 302 of the Nuclear Waste Policy Act, 42 U.S.C. 10222.

(2) each party or potential party shall submit one bibliographic header that identifies vouchers for all travel specified in paragraph (a) (1) of this section. <sup>THE LOCATION OF</sup> (e)

(3) In addition to the bibliographic headers for the material specified in paragraph (a) (1) of this section, an image shall also be submitted for maps, photographs, and other graphic material.

(f) each potential party or party shall submit a bibliographic header for each document—

- (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.

(g) in addition to the submission of documents under paragraph (a) of this section, potential parties or parties may request that another potential party's or party's documents be entered into the Licensing Support System in searchable full text if they or the other potential party or party intend to rely on such documents during the licensing proceeding. <sup>THAT ITS</sup> <sup>OF</sup>

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

(i) 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 ISS Administrator by the respective agency which generated the document.

(j)(1) Docketing of the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall not be permitted under subpart J of this part unless the Director of the Office of Nuclear Material Safety and Safeguards has certified, at least six months in advance of the submission of the license application, that the license applicant has substantially complied with the provisions of this section. <sup>ISS ADMINISTRATOR</sup>

(2)(i) The Director of the Office of Nuclear Material Safety and Safeguards shall evaluate the extent of the license applicant's compliance with the provisions of this section at six month intervals beginning six <sup>LSS ADMINISTRATOR</sup>

HIS OR HER APPOINTMENT UNDER SECTION 2.1011 OF THIS SUBPART.

~~months after the designation of the Pre-license Application Licensing Board under section 2.1011 of this subpart.~~

~~(ii) The Director of the Office of Nuclear Material Safety and Safeguards shall prepare a written report of his or her evaluation of license applicant compliance under paragraph (j)(i) of this section. The report shall include recommendations to the license applicant on the actions necessary to achieve substantial compliance pursuant to paragraph (j)(1) of this section.~~

~~(iii) Potential parties may submit comments on the report prepared pursuant to paragraph (j)(2)(ii) to the Director of the Office of Nuclear Material Safety and Safeguards.~~

~~(3) In the event that the Director of the Office of Nuclear Material Safety and Safeguards does not certify substantial compliance under paragraph (j)(1) of this section, the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall be submitted under subpart G of this part.~~

GOVERNED BY

PROCEEDING ON THE

2.1004 -

~~2.1005~~ Amendments and additions.

(a) <sup>within</sup> Within five days after a document is entered into the Licensing Support System by the ISS Administrator, the submitter shall verify that the document has been entered correctly, and shall notify the ISS Administrator of any errors in entry.

(b) After the time period specified for verification in paragraph (a) of this section has expired, ~~potential party or party~~ a submitter who desires to amend an alleged incorrect document, shall—

(1) submit the corrected version to the ISS Administrator for entry as a separate document; and

(2) submit a bibliographic header for the corrected version that identifies all revisions to the corrected version.

(c) The ISS Administrator shall ensure that the bibliographic header for the original document specifies that a corrected version is also in the Licensing Support System.

(d)(1) ~~A/potential party or party~~ A submitter shall submit any revised pages of a document in the Licensing Support System to the ISS Administrator for entry into the Licensing Support System as separate documents.

(2) The ISS Administrator shall ensure that the bibliographic header for the original document specifies that revisions have been entered into the Licensing Support System.

(e) Any document that has been incorrectly excluded from the Licensing Support System must be submitted to the ISS Administrator by the ~~potential party or party~~ <sup>responsible</sup> submitter responsible for the submission of the document within two days after its exclusion has been

identified unless some other time is approved by the Pre-License Application Licensing Board; provided, however, that the time for submittal under this paragraph will be stayed pending Pre-license Application Licensing Board action on a motion to extend the time of submittal.

2.1005 ~~2.1006~~ Exclusions.

2.1003

The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to section ~~2.1004~~ of this subpart, or through derivative discovery pursuant to section ~~2.1006(i)(1)~~ of this subpart—

2.1019

- (a) official notice materials;
- (b) reference books and text books;
- (c) material pertaining exclusively to administration, such as material 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) junk mail;
- (f) reference cited in contractor reports that are generally available through other means.

AND THE EXCEPTION FROM DISCLOSURE IN

2.1006 ~~2.1006~~ ~~2.1007~~ Privilege.

2.1003

(a) Subject to the requirements in section ~~2.1004(d)~~ of this subpart, 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 parties and parties. ~~Privileges available in addition to Federal agencies, the deliberative process privilege~~ will also be available to State and local government entities, and Indian Tribes.

(b) Any document for which a claim of privilege is asserted that is not upheld by the Pre-license Application Licensing Board shall be submitted by the party or potential party that asserted the claim, to the ISS Administrator for entry into the Licensing Support System, either into an open access file, or to ~~the Licensing Board~~ for entry into ~~the~~ a Protective Order file if ~~the Licensing Board~~ so directs under section ~~2.1011(b)(4)~~ or section ~~2.1018(f)~~ ~~2.1019(f)~~ of this subpart.

2.1010

2.1018

(c) Notwithstanding the availability of the deliberative process privilege under section 2.790(a)(5) of this part, circulated drafts ~~(relating to a final decision as defined in section 2.1001 of this subpart)~~ ~~or documents~~ not otherwise privileged, shall be submitted for entry into the Licensing Support System pursuant to section ~~2.1004(a)~~ and ~~2.1004(c)~~ of this subpart.

OF A FINAL DOCUMENT OR AN WHICH A DECISION HAS BEEN MADE NOT FINALIZE THE DOCUMENTS

2.1007 ~~2.1007~~ ~~2.1008~~ Public Access.

2.1003

2.1003

(a)(1) Terminals for access to ~~bibliographic~~ full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of the U.S. Department of Energy, 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 ~~bibliographic~~ full headers for all documents in the Licensing Support System during the pre-license application phase, and images of the non-privileged documents of the U.S. Nuclear Regulatory Commission, shall be provided at the headquarters Public Document Room 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.

(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, Nye County, Nevada, and Lincoln County, Nevada.

2.1006 (4) Public access to the searchable full text and images of all the documents in the Licensing Support System, not privileged under section 2.1007, shall be provided by the ISS 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.

(b) Paper 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.

(c) Access to the Licensing Support System for potential parties and parties will be provided in the following manner--

(1) full text search capability through dial-up access from remote locations at the potential party's or party's expense;

(2) image access from remote locations at the potential party's or party's expense;

(3) the capability to electronically request a paper copy of a document at the time of search;

(4) generic fee waiver for the paper copy requested under paragraph (c)(3) of this section for potential parties or parties who meet the criteria in section 9.41 of this chapter.

(d) Documents submitted to the ISS Administrator for entry into the Licensing Support System shall not be considered as agency records of the ISS Administrator for purposes of the Freedom of Information Act (FOIA), 5 U.S.C.

552, and shall remain under the custody and control of the agency or organization that generated the documents and submitted them to the ISS Administrator. Requests for access to those documents pursuant to FOIA shall be transmitted to the federal agency that originated the document.

2.1008 ~~2.1009~~ Potential ~~participating~~ parties.

(a) A person ~~or group~~ may petition the Pre-license Application Licensing Board established pursuant to section 2.1010 of this subpart for access to the Licensing Support System.

(b) A petition must set forth with particularity the interest of the petitioner in gaining access to the Licensing Support System with particular reference to the following factors—

- (1) the factors set out in section ~~2.1015~~ <sup>2.1014</sup> (c) of this subpart; or
  - (2) the criteria in section 2.715(c) of this part; or
  - ~~(3) the topical guidelines in Regulatory Guide . . .~~
- AS DETERMINED IN REFERENCE TO

(b) (c) (1) The Pre-License Application Licensing Board shall, in ruling on a petition for access, consider ~~the factors set out in paragraph (c) of section 2.1014/2.1015(c) of this subpart/and section 2.715(c) of this part/~~

- (i) the factors set out in section ~~2.1015~~ <sup>2.1014</sup> (c) of this subpart; AS DETERMINED IN REFERENCE TO
- (ii) the criteria in section 2.715(c) of this part;
- ~~(iii) the topical guidelines in Regulatory Guide . . .~~

(2) To the extent that the Pre-license Application Licensing Board's decision to grant access to the Licensing Support System is based on paragraph (c)(1)(i) of this section, a decision to grant access under paragraph (c)(1) of this section shall constitute a presumptive determination that a person filing a petition for leave to intervene or request a hearing under section ~~2.1015~~ <sup>2.1014</sup> of this subpart, has made the requisite showing of interest under section ~~2.1015~~ <sup>2.1014</sup> (c).

(c) (d) 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~~ <sup>2.1003</sup>, and agree to comply with the orders of the Pre-License Application Licensing Board established pursuant to section ~~2.1010~~ <sup>2.1010</sup> 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 effect on the State's exercise of its discretionary rights under section 113 of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10131.~~

(e) ~~Denial of access by the Appeals Board to section 2.1013 of this subpart.~~

RIGHT OF  
RANGES  
TO (b)  
AND (c)  
BY HAVE  
OR REMOVE

*to share access terminals*

(e) The presiding officer may order any of the potential parties granted access under paragraph (c) of this section who have substantially the same interest as may be affected by the proceeding to consolidate for purposes of using the Licensing Support System.

*2.1009 2/1009 2-1010* Procedures.

(a) Each potential party 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 *2.1003* ~~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 ~~ISS~~ *THE SUBMITTER'S UNIQUE* identification number;
- (5) Cooperate with the advisory review process established by the ISS Administrator pursuant to section ~~2/1011(A)/111~~ *2-1012* (e) of this subpart. *2.1011*

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the ISS Administrator that the procedures specified in paragraph (a)(2) 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.

*2.1010*  
~~2/1010 2-1011~~ Pre-License Application Licensing Board.

(a) *2.1008* ~~(1)~~ a Pre-License Application Licensing Board designated ~~according to~~ *Section 2/170A/02/Y118/011* by the Commission shall rule on all petitions for access to the Licensing Support System submitted under section ~~2/1008(A)~~ *2-1009* of this subpart, ~~and~~ *and* all disputes over the entry of documents during the pre-license application phase, including disputes relating to relevance and privilege; ~~and~~ *and* ~~all~~ *and* ~~disputes relating to the design and development of the Licensing Support System by the U.S. Department of Energy~~ *and* ~~the operation of the Licensing Support System by the ISS Administrator~~ *and* ~~under section 2-1012~~ *and* ~~of this subpart, including disputes relating to the implementation of the recommendations of the ISS Advisory Review Board established under section 2-1012(d) of this subpart.~~

*parties relating to*

*2.1011*

(2) The Pre-License Application Licensing Board shall be designated by *insert date of six months* after the effective date of the ISS rulemaking.

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

(1) whether the material is relevant under the topical guidelines in Regulatory Guide . . . ;

(1X) (2) whether the material is privileged or confidential commercial or financial information, or is safeguards information, under section ~~2-1007~~ *2.1006* of this subpart;

*TRADE SECRETS*

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

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

(5) 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 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 potential party or 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) Upon a final determination that the material is not relevant, privileged, proprietary, or safeguards information, or is otherwise exempt from disclosure, the potential party who asserted the claim of withholding must submit the document to the ISS Administrator within ~~twenty-four hours~~ two days for entry into the Licensing Support System.

CONFIDENTIAL COMMERCIAL OR FINANCIAL INFORMATION,  
TRADE SECRETS

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

2.1013

2.1011  
~~2.1011 2.1012~~ ISS 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 premises of any U.S. Department of Energy building or facility or that of its contractors.

(a) The ISS 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 sections 2.1004(a) (b) and (c) of this part 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 part 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 proper standards for the submission of ASCII files, bibliographic headers, and images.

5. Establishing back-up, quality, and availability of Licensing Support System documents and images.

6. Establishing and maintaining security for the Licensing Support System data base.

7. Preparing, distributing, operating, 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 passwords/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 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

12. Other duties as specified in this part.

ADMINISTERED

(a) The Licensing Support System shall be operated by the ISS Administrator.

NO TESTING

SHALL BE

(b) The U.S. Department of Energy is responsible for the design and development of the computer system necessary to implement the Licensing Support System and for all procurements of computer hardware and software, including the follow on redaction and procurement of equipment to maintain the system.

WHO WILL BE DESIGNATED SIXTY DAY AFTER EFFECTIVE DATE OF THE RULE

INITIAL

(c) (1) The Licensing Support System, described in section 2.1002 of this subpart, shall not be part of any computer system that is controlled by any party or potential party to the high-level waste licensing proceeding, including the U.S. Department of Energy, its contractors, or that is physically located on the premises of any party or potential party to the proceeding, including the U.S. Department of Energy and that of its contractors.

INCLUDING HARDWARE APPLICATION, SOFTWARE, AND THE DOCUMENTATION AND PROCEDURES FOR THE MAINTENANCE OF THE LSS.

NOTHING IN THIS SUBPART SHALL PRECLUDE DOE OR ANY OTHER POTENTIAL PARTY OR ENTITY FROM USING THE LSS COMPUTER FACILITY FOR A RECORDS MANAGEMENT SYSTEM INDEPENDENT OF THE LSS.

(2) ~~The computer system may be partitioned so that the U.S. Department of Energy may use it for its own records management system independent of the Licensing Support System.~~

(d) The ISS Administrator ~~is~~ <sup>SHALL BE</sup> responsible for ~~routine operation~~ <sup>THE ADMINISTRATION</sup> of the Licensing Support System, including—

(3) ~~ESTABLISHING FORMAT STANDARDS FOR THE ENTRY OF DOCUMENTARY MATERIAL,~~

(a) ~~receiving and entering the documentary material specified in section 2.1004 of this subpart into the Licensing Support System in the appropriate format - searchable full text, bibliographic headers, and/or image - and eliminating duplicates;~~

(4) ~~ASSURING LSS AVAILABILITY AND THE INTEGRITY OF THE DATA BASE~~

(a) ~~establishing back-up, quality, and availability of Licensing Support System documents and images;~~

(b) ~~maintaining security for the Licensing Support System data base, including assigning user password security codes;~~

(4) ~~distributing, operating, and maintaining appropriate software for the Licensing Support System;~~

(5) ~~maintaining the thesaurus and authority tables for the Licensing Support System;~~

(6) ~~establishing and implementing a training program for Licensing Support System potential users;~~

(7) ~~providing support staff to assist users in searching the Licensing Support System;~~

(8) ~~other duties as specified in this subpart.~~ <sup>NECESSARY FOR LSS OPERATION OR AS</sup>

(e)(1) ~~The ISS Administrator shall establish an ISS Advisory Review Board comprised of representatives of each party or potential party to the licensing proceeding.~~ <sup>FROM THE</sup> <sup>HIGH-LEVEL WASTE</sup>

(2) ~~The ISS Advisory Review Board shall advise—~~

(i) ~~the U.S. Department of Energy on policy considerations pertaining to the design and development of the computer system necessary to implement the Licensing Support System;~~

(ii) ~~the ISS Administrator on the implementation of the Licensing Support System.~~

(3) ~~The ISS Administrator, pursuant to section 2.2012(a) of this subpart, and the U.S. Department of Energy, pursuant to section 2.2012(b) of this subpart, as appropriate, will implement advice from the Review Board, including—~~

(i) ~~establishing format standards for the submission of information to the Licensing Support System by the parties or potential parties, such as ASCII files, bibliographic headers, and images;~~

(1) PROVIDE THE NECESSARY PERSONNEL, MATERIALS, AND SERVICES FOR OPERATION AND MAINTENANCE OF THE LSS

(ii) establishing the procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) establishing access protocols for raw data, field notes, and other items covered by section 2.1004(e) of this subpart;

(iv) establishing a thesaurus, authority tables, and duplication elimination process for the Licensing Support System;

(v) other duties as specified in this subpart.

2.1012  
~~2.1012-2.1013~~ Compliance.

THE LSS ADMINISTRATOR HAS NOT  
CERTIFIED THAT

(a) In addition to the requirements of section 2.101(f) 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 under this subpart, if the license applicant ~~has complied~~ is not in substantial and timely compliance with section ~~2.1004~~ of this part.

2.1003

(b) A person ~~including~~ including potential parties granted access to the Licensing Support System under section 2.1008 of this subpart, shall not be granted party status under section 2.1014 of this part, or status as an interested governmental participant under section 2.715(c) of this part, if they cannot demonstrate substantial and timely 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 2.1014 or section 2.715(c) of this part.

(c) The Licensing Board established for the high-level waste licensing proceeding, hereinafter the "Hearing Licensing Board," shall not make a finding of substantial and timely compliance pursuant to paragraph (b) of this subpart for any person ~~including~~ who is not in compliance with all applicable orders of the Pre-License Application Licensing Board established pursuant to section 2.1010 of this subpart.

SUSPENDED OR

(d) Access to the Licensing Support System may be terminated for any potential party or party who is in noncompliance with any applicable order of the Pre-license Application Licensing Board or the Hearing Licensing Board.

2.1013  
~~2.1013-2.1014~~ LSS use during the adjudicatory proceeding.

(a)(1) Pursuant to section 2.702, the Secretary will maintain the official 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 docketing 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 duplicate of the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or for material that is not suitable for entry in searchable full text, by header or image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been entered into the Licensing Support System before ~~the hearing commences~~ the commencement of that portion of the hearing in which the exhibit will be offered. 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 will be entered into the Licensing Support System by the ISS Administrator on a daily basis in order to provide next-day availability at the hearing. ~~Documents that parties or parties intend to use as exhibits at the hearing may have been entered into the Licensing Support System pursuant to section 2.700A(e) of this part.~~

(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, the ISS Administrator, and the Secretary, according to format requirements established by the ISS 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 the party or its designated representative. 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 ("delivery receipt") ; or
- (ii) the affidavit of the party making the service; or
- (iii) the certificate of counsel.

(5) One signed paper copy of each filing shall be served promptly on the Secretary by regular mail pursuant to the requirements of sections 2.708 and 2.701 of this part.

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

(d) Online access to the Licensing Support System, including <sup>A</sup>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 ~~Maxx~~ paper copy, and images thereof, will also be permitted ~~Maxx~~ at the hearing

OTHER

2.1014  
~~2.1014~~ Intervention.

AND ANY REQUESTS TO PARTICIPATE UNDER SECTION 2.715(C) OF THIS PART

WITHIN THIRTY DAYS AFTER PUBLICATION OF THE NOTICE OF HEARING

(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, <sup>AND</sup> 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 of aspects of the subject matter of the proceeding as to which petitioner wishes to intervene;~~

(ii) 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;

(iii) reference to <sup>ANY</sup> the specific portions of documents in the Licensing Support System that provide a basis for the contention; and

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

(3) Any petitioner who fails to satisfy paragraphs (a)(2)(ii), (iii), and (iv) of this section with respect to at least one contention shall not be permitted to participate as a party.

~~(3)~~ (4) Any ~~person who has been admitted as a party pursuant to this section~~ may amend ~~his~~ its petition for leave to intervene with respect to the contentions specified in paragraph ~~(a)(2)(ii)~~ (a)(2)(ii) 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) Subject to paragraph (a)(3) of this section, 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, an affected unit of local government as defined in section 2(31) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10101, 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 <sup>ATOMIC ENERGY</sup> 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 the petitioner's 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.

~~2.1013~~ <sup>2.1015</sup> Appeals.

(a) No appeals from any board order or decision issued under this subpart are permitted, except as prescribed in paragraphs (b), (c), (d), (e), and (f).

(b) A notice of appeal from (i) a Pre-application Licensing Board order issued pursuant to section ~~2.1013~~ <sup>2.1010</sup> of this subpart, (ii) a Licensing Board First or Second Prehearing Conference Order issued pursuant to section 2.1020 or 2.1021 of this subpart, or (iii) a Licensing Board order granting or denying a motion for summary disposition issued in accordance with section 2.749 of subpart G, shall be filed with the Atomic Safety and Licensing Appeal Board within ten (10) days after service of the order. A supporting brief shall accompany the notice of appeal. Any other party or potential party may file a brief in opposition to the appeal within ten (10) days after service of the appeal.

(c) Appeals from a Licensing Board initial decision or partial initial decision shall be filed and briefed before the Atomic Safety and Licensing Appeal Board in accordance with the requirements of section 2.762 of subpart G.

(d) When, in the judgment of a board, prompt appellate review of an order not immediately appealable under paragraph (b) of this section is necessary to prevent detriment to the public interest or unusual delay or expense, the board may refer the ruling promptly to the Appeal Board or Commission, as appropriate, and shall provide notice of such referral to the parties or potential parties. Pursuant to section 2.718(i) of subpart G, the parties or potential parties may also seek directed certification of rulings not immediately appealable under paragraph (b) of this section.

(e) A party or potential party may seek Commission review of any Appeal Board decision or order issued under this section ~~as provided~~ in accordance with the procedures in section 2.786(b) of subpart G.

(f) Unless otherwise ordered, the filing of an appeal, petition for review, or request for certification of a ruling shall not stay the proceeding or extend the time for the performance of any act.

2.1016  
~~2.1016~~ 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 2.1013(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.

(f) Where the motion in question is a motion to compel discovery under section 2.720(h)(2) or section ~~2.1018(f)~~ <sup>2.1018</sup>, 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 unless the conference has been transcribed. 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.

2.1017  
~~2.1017~~ 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.

2.1018  
~~2.1018-2.1019~~ Discovery.

2.1003  
(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 ~~2.1019~~ of this subpart; and requests for admission pursuant to section 2.742 of this part.

(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 its 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 it 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 its 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 the witness is expected to testify, and the substance of the witness's testimony.

(2) A party is under a duty seasonably to amend a prior response if it obtains information upon the basis of which (i) it knows that the response was incorrect when made, or (ii) it 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 five 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.

<sup>2-10-19</sup>  
~~2/17/19~~ ~~2-10-19~~ 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. Depositions may be conducted by telephone or by video teleconference.

(c) The deponent shall be sworn or shall affirm before any questions are put to him or her. 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 the deponent 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 transmit the deposition to the ISS Administrator.

(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 its 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 the categories of documents set forth in paragraph (i)(2)(i) of this section, 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)(i) The following material is excluded from initial entry into the Licensing Support System, but is subject to derivative discovery under paragraph (i)(1) of this section--

- (A) (i) personal records;
- (B) (ii) travel vouchers;
- (C) (iii) speeches;
- (D) (iv) preliminary drafts;
- (v) marginalia.

(ii) The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to section 21004 of this chapter, or through derivative discovery pursuant to paragraph (i)(1) of this section--

- (A) official notice materials;
- (B) reference books and text books;
- (C) material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, or equipment, except for the scope of work on a procurement related to responsibility filing, construction, or operation of the transportation of spent nuclear fuel or high-level waste;
- (D) press clippings and press releases;
- (E) bank bills;

////////// (F) // reference cited in contract or reports that are generally  
////////// available through other means //

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

(4) The deponent shall bring a paper 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.

(5) 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 ISS.

(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. 1020  
2/1078 ~~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 formal and informal conferences among the parties, including teleconferences, to the extent that the presiding officer considers that such a conference would expedite the proceeding.

(c) A prehearing conference held pursuant to this section shall be stenographically reported and may be conducted by teleconference.

(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.

<sup>2.1021</sup>  
~~2.1021~~ ~~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 2.1014(a)(3) 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.

<sup>2.1022</sup>  
~~2.1022~~ ~~2.1023~~ Immediate effectiveness of initial decision.



~~NUCLEAR SAFETY AND LICENSING BOARD IN ITS CONSIDERATION OF AN APPEAL OR THE MERITS THEREOF OR SECTIONS 2.762 AND 2.788 OF THIS PART, OR IN ANY SUBSEQUENT FINAL ADJUDICATION, THE COMMISSION'S EFFECTIVENESS OR DETERMINATION IS ENTIRELY WITHOUT PREJUDICE TO SUCH CONSIDERATION IN ANY SUBSEQUENT PROCEEDINGS.~~

(a) Pending review and final decision by the Commission, an initial decision resolving all issues before the presiding officer in favor of issuance or amendment of a construction authorization pursuant to section 60.31 of this chapter or a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to section 60.41 of this chapter, will be immediately effective upon issuance except --

(1) As provided in any order issued in accordance with section 2.788 of this part that stays the effectiveness of an initial decision; or

(2) As otherwise provided by the Commission in special circumstances.

(b) The Director of Nuclear Material Safety and Safeguards, as appropriate, notwithstanding the filing or pendency of an appeal pursuant to section 2.762 of this part or a petition for review pursuant to section 2.786 of this part, promptly shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area, or amendments thereto, following an initial decision resolving all issues before the presiding officer in favor of the licensing action upon making the appropriate licensing findings, except--

(1) As provided in paragraph (c) of this section; or

(2) As provided in any order issued in accordance with section 2.788 of this part that stays the effectiveness of an initial decision; or

(3) As otherwise provided by the Commission in special circumstances.

(c)(1) Before the Director of Nuclear Material Safety and Safeguards may issue a construction authorization or a license to receive and possess waste at a geologic repository operations area in accordance with paragraph (c)(2) of this section, the Commission, in the exercise of its supervisory authority over agency proceedings, shall undertake and complete a supervisory examination of those issues contested in the proceeding before the Licensing Board to consider whether there is any significant basis for doubting that the facility will be operated with adequate protection of the public health and safety, and whether the Commission should take action to suspend or to otherwise condition the effectiveness of a Licensing Board decision that resolves contested issues in a proceeding in favor of issuing a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area. This supervisory examination is not part of the adjudicatory proceeding and the parties to the proceeding have no right to file pleadings with the Commission with regard to this supervisory examination. The Commission shall notify the

Director in writing when its supervisory examination conducted in accordance with this paragraph has been completed.

(2) Before the Director of Nuclear Material Safety and Safeguards issues a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area, the Commission shall review those issues that have not been contested in the proceeding before the Licensing Board but about which the Director must make appropriate findings prior to the issuance of such a license. The Director shall issue a construction authorization or a license to receive and possess high-level radioactive waste at a geologic repository operations area only after written notification from the Commission of its completion of its review under this paragraph and of its determination that it is appropriate for the Director to issue such a license. This Commission review of uncontested issues is not part of the adjudicatory proceeding and the parties to the proceeding have no right to file pleadings with the Commission concerning this review.

(3) No suspension of the effectiveness of a Licensing Board's initial decision or postponement of the Director's issuance of a license that results from a <sup>COMMISSION</sup> Commission supervisory examination of contested issues under paragraph (c)(1) of this section or a review of uncontested issues under paragraph (c)(2) of this section will be entered except in writing with a statement of the reasons. Such suspension or postponement will be limited to such period as is necessary for the ~~Committee~~ to resolve the matters at issue. If the supervisory examination results in a suspension of the effectiveness of the Licensing Board's initial decision under paragraph (c)(1) of this section, the Commission will take review of the decision sua sponte and further proceedings relative to the contested matters at issue will be in accordance with procedures for participation by the applicant, the NRC staff, or other parties to the Licensing Board proceeding established by the Commission in its written statement of reasons. If a postponement results from a review under paragraph (c)(2) of this section, comments on the uncontested matters at issue may be filed by the applicant within ten (10) days of service of the Commission's written statement.

#### 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~~ adding—

With the exception of license applications docketed under Subpart J of this part

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).