

8/16/88

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MINUTES OF THE HLW LICENSING SUPPORT SYSTEM  
ADVISORY COMMITTEE MEETING

JUNE 29-30, 1988  
RENO, NEVADA

MEETING LOCATION AND ATTENDANCE

The eighth meeting of the HLW Licensing Support System Advisory Committee (hereafter referred to as the Committee) was held in Reno, Nevada on June 29-30, 1988. A list of Committee members and members of the public who were in attendance is appended hereto as Attachment 1.

OPENING BUSINESS

Several suggestions for changes to the minutes of the May 18-19, 1988 meeting were discussed and approved by the Committee. A representative from the Edison Electric Institute (EEI) stated that there seemed to be some aspects of the discussion which took place at the end of the May meeting that had not been captured in the minutes. The facilitators explained that they had made judgments about the completeness of that discussion and decided not to try to capture it in the minutes because the discussion had been somewhat disjointed. They requested that EEI submit suggested language for incorporation into the minutes.

The facilitator stated that he had received a copy of a letter from representatives of the U.S. Council on Energy Awareness (CEA) which had been written in response to the letter that the Nuclear Regulatory Commission had received from Governor Roy Romer on behalf of the Corridor Governments Planning Group. The facilitator noted that the CEA letter, which is appended hereto as Attachment 2, explained that CEA members include companies that have made payments into the Nuclear Waste Fund that are not represented by EEI, and that CEA does more than simply promote the use of nuclear power.

The facilitator then explained that the proposed agenda for the remainder of the meeting was to discuss those sections of the rule which the Committee had not yet addressed and then circle back to the beginning of the rule to discuss any unresolved issues. The facilitator noted that this meeting was either the last or the next to last meeting and that it would therefore be necessary to discuss where each Committee members stands with respect to the overall objective of the negotiations before concluding the meeting.

REVIEW OF THE DRAFT RULE

Section 2.1018 - Discovery

The Committee had a lengthy discussion of this section of the rule during the first day of the meeting. The end result of this discussion was translated by NRC staff into proposed language which was presented to Committee members during the second day of the meeting. This language was then revised by the

Committee and will be incorporated into the next draft of the rule. (Author's note: Since the discussion of this section of the rule was quite lengthy, with many different proposed changes being made to the language, the following section of these minutes simply tries to capture the highlights of the discussion rather than capturing all the details and nuances of that discussion.)


Paragraphs (a) and (b)

The principal issues that were addressed in discussing paragraphs (a) and (b) of Section 2.1018 included the scope of discovery methods that should be permissible under the rule and any restrictions that might be placed on certain methods of discovery. In particular, the Committee discussed whether the use of interrogatories and depositions upon oral examinations and written questions should be permitted and, if so, what under what limitations, if any.

With respect to the use of oral and written depositions, EEI proposed placing restrictions on both oral and written depositions or the elimination of written depositions entirely. The types of restrictions proposed by EEI included limitations on the number of depositions or the time period for their use. They stated that they were principally concerned about the use of written depositions. In addition, they stated that the current language does not reflect existing NRC practice which limits discovery to the issues raised in the contentions that are admitted after the first pre-hearing conference.

EEI representatives emphasized that the benefits that would accrue from the use of the LSS as a discovery tool during the pre-application period should permit the NRC to place restrictions on the use of "non-LSS" or "derivative" discovery methods during the post-application period. They also made it clear that they placed great importance on whether the rule will limit and thereby curb the abuse of non-LSS methods of discovery. They saw such limitations not only as timesavings devices but as a means of off-setting the cost of the LSS.

Representatives of the State of Nevada stated that it was their understanding that the objective of this rule was to enhance traditional methods of discovery rather than place limitations on them. They stated that they had already given up two traditional forms of discovery -- first round written interrogatories and requests for production of documents -- in exchange for the use of the LSS, and they were not prepared to agree to any further restrictions to their discovery rights. They stated that they would be willing to live with any limitations on the use of certain discovery methods and the scope of discovery as long as it was set by the Licensing Board at the first pre-hearing conference. That is, Nevada representatives were unwilling to agree to any limitations on the scope of permissible discovery methods (other than the two noted above) in the rule itself. However, they indicated that they would be willing to consider ways in which the rule could be used to curb the abuse of specific discovery methods, short of disallowing their use entirely.



The NRC spokesperson stated that the NRC was not asking anyone to give up their discovery rights. He stated that he

viewed the use of the LSS as an enhancement of traditional discovery rights and as a replacement for the the two methods of discovery noted above. The NRC spokesperson went on to say that the NRC was interested in finding ways to curb the abuse of non-LSS forms of discovery, rather than asking parties and potential parties to give them up entirely.

With respect to the issue of the timing of non-LSS discovery methods and limitations on their use vis a vis admitted contentions, NRC representatives proposed adding language to paragraph (b) that would serve as a substitute for the second to last sentence of that paragraph. The revised language would read as follows:

Except for discovery pursuant to Section 2.1019 of this subpart, all other discovery shall begin during the pre-license application phase. Discovery pursuant to Section 2.1019 shall begin after the issuance of the first pre-hearing conference order and shall be limited to the issues defined in that order.

With no member raising any objections to this language, the Committee adopted it on a tentative basis, pending resolution of other issues. Nevada representatives suggested, and the Committee agreed, that language should be added to Section 2.1021 (a) which would indicate that one of the functions the first pre-hearing conference is to set limits on the scope of discovery and to set a timetable for the completion of discovery.

The spokesperson for the environmental coalition stated that the use of written depositions, although not an ideal method of discovery, was an important tool that she was not willing to forgo. She explained that this method allows parties which have limited resources to depose witnesses through the mail. She also stated that she was willing to discuss ways in which the rule might be used to curb any abuse of this particular method, but she was unwilling to restrict its use entirely. She stated that she was interested in finding a way to permit the limited use of interrogatories to allow one party to find out who has expertise in a certain area and who they should address written depositions to, if this was not readily apparent in documents that are found in the LSS. She explained that such a limited use of interrogatories could make the use of written depositions more efficient. That is, it would not be necessary to send the same questions to every witness in order to find out who is the right person to answer those particular questions.

With respect to the use of interrogatories, the Committee had considered this issue at its last meeting and was awaiting a proposal from representatives of EEI and the Department of Energy (DOE). DOE and EEI representatives stated that they had conferred about this matter and proposed adding to the rule that interrogatories could be used to:

- o identify witnesses;
- o determine the qualifications and areas of expertise of witnesses;

- o obtain a summary of the testimony to be presented by witnesses; and
- o determine which documents witnesses will be relying upon in their testimony.

In discussing the proposal of the environmental coalition for the use of interrogatories, the environmental spokesperson explained that she wanted to avoid having to depose the head of an office or everyone in an office when there is really only one person in an office that is able to answer the specific questions that would be raised in a deposition. She stated that obtaining information through an interrogatory about who should be deposed would provide the party which is being deposed with the information or "ammunition" upon which the abuse of written depositions could be curtailed.

DOE representatives stated that they would agree to including language that would allow for the limited use of interrogatories for the purposes specified by the environmental coalition. They added that they would like to see the burden of showing cause to depose someone shift to the deposing party if they wished to depose anyone who was not on the list provided in a response to an interrogatory of this kind. This latter suggestion was not agreed to by the environmental coalition.

In summarizing the discussion, the facilitator stated that the Committee seemed to agree that the scope of permissible discovery methods should include limited use of interrogatories (as per the DOE/EEI list with the addition proposed by the environmental coalition) and the use of written and oral depositions. EEI representatives stated that they had not yet agreed to the use of written interrogatories or depositions. The Committee decided that it would move on and come back to this issue.

#### Paragraph (b)(2)

EEI representatives asked why the word "consultant" had been removed from paragraph (b)(2) in exchange for the words "or similar agent." Nevada representatives stated that they did not want "consultants" listed in this paragraph because it would limit a party's ability to depose such persons. It was clarified that the provisions of the paragraph were not intended to apply to "consultants" who are hired by a party to conduct studies or assess impacts as, for example, as part of DOE's overall waste repository program, but they were intended to apply to "consultants" who had been hired to help a party's attorney develop a strategy for presenting expert testimony. Thus, the term "similar agent" was proposed by Nevada as a substitute for "consultant." It was agreed to leave the language as is, but to clarify the intent in the preamble.

#### Paragraph (c) and (d)

(Author's note: Since the issues discussed under these paragraphs were related to the issues discussed under paragraphs (a) and (b) and, ultimately, were discussed in more detail under Section 2.1019, the continuation of the Committee's discussion is

captured below under Section 2.1019.)

Paragraph (e)

The spokesperson for the environmental coalition pointed out that what was listed as paragraph (e)(1) in the last draft of the rule would have to go back into the rule if the Committee came to a consensus on the use of interrogatories as proposed.

Paragraph (f)

Nevada representatives asked what the sanction was for failing to respond to a request for entry upon land or property under paragraph (f)(1). NRC representatives responded that the sanction was for the Licensing Board to order a response. It was agreed that the ability of the Board to issue such an order should be made more apparent in this section of the rule.

Under paragraph (f)(3), it was agreed that the double negative used in the first sentence made the meaning of this sentence unclear. The Committee requested NRC staff to revise this sentence such that it would be clear that an independent request for the issuance of a subpoena may be directed to a non-party (except for contractors of parties or potential parties) for production of documents.

Section 2.1019 - Depositions upon oral examination and upon written questions

Representatives for EEI reiterated their position that they would like to see limits placed on both oral and written depositions. NRC representatives stated that they were not aware of any criticisms of the use of oral depositions. EEI representatives responded that as an alternative to limitations placed on both oral and written depositions, they proposed the complete elimination of the latter. Nevada representatives reiterated that they were not prepared to agree in advance to any arbitrary limits on either oral or written depositions, and particularly on oral depositions. They proposed that the Licensing Board not only set limits on the scope of discovery, as per the discussion above, but on the timetable for discovery as well, and that it do this at the first pre-hearing conference.

A number of different specific deadlines for completing discovery were considered by the Committee. EEI representatives proposed that discovery be completed no later than six months following the first pre-hearing conference order. When it was pointed out that there might be a need to conduct discovery on amended contentions following the issuance of the Safety Evaluation Report (SER), DOE representatives proposed that an additional 90 days for discovery be permitted under such circumstances.

After a lengthy discussion of this issue, the Committee agreed that it would add language to Section 2.1018(c) that would encourage the Licensing Board to take into consideration statutory deadlines when issuing orders to the parties respecting the use of specific discovery methods and the completion of discovery, and that this would be further clarified in Sections 2.1019, 2.1020 and 2.1021, as well as in the preamble to the rule. More specifically, it was agreed on a tentative basis that:

- o Section 2.1018(c) should include the avoidance of "undue delay" as one of the factors that the presiding officer should consider in issuing protective orders;
- o the Board would be charged with specifying a schedule for the completion of discovery at both the first and the second pre-hearing conferences; and
- o the preamble to the rule would specify that the Board would "exercise all due diligence to ensure that discovery would be completed within two years of the (notice of hearing)."

It was clarified that this language was not intended to force the Board to establish a continuous two year period for discovery. Rather, it was intended to provide the Board with guidance upon which it can set limits on the time period for discovery such that discovery would not adversely affect the "critical path" for completing the licensing proceeding within the statutory deadline.

When asked how these proposed changes to the rule affected EEI's position on the elimination of the use of written depositions, EEI representatives asked, and it was agreed that the language would make explicit reference to the relevant section of the Nuclear Waste Policy Act (NWPA) regarding statutory deadlines. In addition, it was agreed that the preamble would make it clear that direct certification to the Commission would be liberally granted if parties were concerned that the Licensing Board was not taking the statutory deadlines into account in its rulings.

After some additional discussion about the pros and cons of establishing a six month deadline for discovery following the first pre-hearing conference, as proposed by EEI, the issue was still unresolved. The environmental spokesperson pointed out that the current licensing schedule, as specified by the NRC, calls for an eleven month period between a final appeal of rulings of the Board that are made at the first pre-hearing conference and the issuance of the SER.

NRC representatives stated that they did not have a problem with the Board establishing a reasonable period for the completion of discovery on original contentions prior to the issuance of the SER. They stated that they were concerned, however, that any additional discovery on amended contentions after the SER is issued may adversely affect the critical path for the licensing proceeding. DOE representatives stated that this statement should make it clear that the critical element of meeting the statutory deadline was the 18 month period that was being allowed for NRC staff review and the completion of the SER. Others pointed out that the proposed two year deadline for completing all discovery also depended upon the NRC meeting the 18 month deadline for completion of the SER.

After various Committee members met in caucuses during a break, NRC representatives proposed that, in addition to the items already discussed, the rule should be structured in such a way that parties would not be permitted to file written

depositions until it could be shown that they had tried and were unsuccessful in their attempts to obtain information in a more informal manner. More specifically, the NRC spokesperson proposed the use of a "settlement judge" or "discovery master" who would attempt to settle disputes that would arise during the use of informal discovery, and that it would only be through orders of this judge or master that the parties could use interrogatories or written depositions.

The spokesperson for the environmental coalition stated that if the discovery master concept was to be viable, the master should be permitted to order the use of any discovery tool he or she thought might help resolve disputes that arise during informal discovery. That is, the master should be able to order parties to use or respond to interrogatories or written depositions if either of these was seen as an appropriate remedy. NRC representatives agreed with this suggestion.

When asked who would serve as the "discovery master," NRC representatives responded that this person would be appointed by the Licensing Board and that the person appointed would likely be a member of the Licensing Board.

The Committee agreed to consider the package that had emerged through the course of discussions during the first day after NRC staff was able to draft language that would show precisely where in the rule and preamble this package would be applied (see "Reconsideration of the Discovery Package" below).

#### Process Check

Before adjourning the first day of the meeting, the facilitator requested that the Committee take some time to consider where it stood with respect to the overall objective of the negotiated rulemaking process. He noted that the qualifications and caveats respecting feasibility that had been expressed in the convening report had begun to surface. Nevertheless, it was his opinion that the Committee seemed to be making steady progress towards the completion of its goal. In particular, he stated that the Committee did not seem to be at an impasse or deadlock.

Despite this progress, he noted that the Committee was nearing the end of the scheduled time for the negotiations. Given this time pressure, he suggested that the Committee consider several options short of simply forging ahead to try to reach a full consensus on all issues. These options include:

- 1) Simply ending the process without having reached a consensus and leaving it up to the NRC to determine how it will proceed;
- 2) Continuing the discussions past the deadline but under a different format (i.e., informal discussions could take place between certain members of the existing Committee); or
- 3) The Committee could attempt to identify where they are in agreement and limit any characterization of consensus to those sections of the rule where the entire Committee can be said to be in agreement.

With respect to the latter option, the facilitator stated that, in his opinion, this would be very difficult to accomplish since the tentative agreements reached by the Committee were highly related to areas of disagreement.

DOE representatives stated that they intended to release their cost-benefit study on the LSS by July 25, 1988. They suggested that the Committee consider rescheduling its next meeting so that this report could be reviewed by Committee members before the end of the negotiations. They stated that DOE would be willing to answer questions about this report at the next meeting, if it were to be rescheduled, or to set up separate sessions with Committee members to answer any questions they might have about the study.

EEl representatives stated that no matter what provisions the rule itself contains, they would be unable to sign-off on a consensus until they knew what the cost of the LSS is likely to be. Later, when asked whether if it was true that even if agreements could be reached on the substantive provisions of the rule that EEl would be unable to agree until the cost issues were addressed, EEl representatives replied in the affirmative.

Nevada representatives suggested that it might be advisable to split the rule into two parts -- those provisions which relate directly to the LSS (i.e., section 2.1000-2.1013) and those that relate to non-LSS discovery (i.e., everything from section 2.1014 and beyond). EEl representatives stated that this would be unacceptable because the first half of the rule contains everything that the other parties wish to have in the rule, whereas the second half of the rule is where EEl is likely to find provisions that would make the rule more acceptable. EEl representatives stated that, from their perspective, the key to meeting the statutory deadline lies in the provisions that are included in the second half of the rule.

DOE representatives stated that it was their understanding that NRC was not saying that the use of the LSS will guarantee meeting the three year deadline, but that it would not be possible to meet this deadline without the LSS. NRC representatives explained that they believed the use of the LSS will be critical to making a reasonable case to the Licensing Board that the parties are ready to go to trial within a time period that will allow the entire proceeding to meet the three year deadline.

Furthermore, NRC representatives stated that if DOE submits a complete application and the LSS is in place as scheduled, then the NRC would be willing to go on record as saying that it believes there is a reasonable chance that the statutory deadlines can be met. DOE representatives indicated that this was a very attractive proposition to them.

EEl representatives asked the NRC spokesperson what the agency intended to do if there was no consensus. The NRC spokesperson responded that the agency would go back and review the compromises that it had reached in the negotiations and compare these to its original or preferred positions and make a judgment about going ahead with a rule that either reflected those compromises, its original positions, or something else entirely.



The facilitator noted that some Committee members may prefer the scenario outlined by the NRC spokesperson. The facilitator added that if the Committee stretched the process out such that the next meeting was conducted after the issuance of the DOE cost-benefit study it would allow more time to work things out between the meetings. However, he added that while it may be possible to negotiate a consensus on the rulemaking issues, it would be idealistic for anyone to be confident that all of the cost related issues, as well as the issues which remain unresolved in the draft rule itself, could be addressed in one more meeting. He also suggested that the cost-benefit study to be developed by DOE is not likely to stand up to close scrutiny in an adversarial setting, meaning that there are likely to be unanswered questions as well as judgments made in this study that may be subject to differing opinions by the members of this Committee.

When DOE representatives were asked whether it would be possible for them to provide Committee members with copies of the cost-benefit study prior to its scheduled release date of July 25th, they responded that it would probably be difficult given the current production and review schedule, but they would look into this possibility. In addition, they stated that it was their current belief that the cost of the LSS over a ten year period will be less than one percent of the total life cycle cost of the nuclear waste program.

The Committee decided to revisit these overall process issues sometime during the next day, after having had a chance to discuss the remaining sections of the rule.

#### Paragraph 2.1019(b)

The Committee agreed to add language to the last sentence of this paragraph so that it was clear that the depositions may be conducted by telephone or video teleconference at the option of the party taking the deposition.

#### Paragraph 2.1019(e)

The spokesperson for the environmental coalition noted that this paragraph may need to be revised if the proposed use of a settlement judge is adopted by the Committee.

#### Paragraph 2.1019(i)

Representatives of EEI asked how the provisions of this paragraph would work if the person being deposed was a third party (i.e., someone who is not a party to the proceeding or a party's contractor). They pointed out that this paragraph seemed to assume that the person being deposed has access to the LSS. The Committee agreed that this paragraph should be revised to make it clear that in the case of third party depositions, the deposing party would be required to submit the index specified in this paragraph rather than the deponent. It was further agreed that this problem should be corrected in paragraphs (i)(1) and (i)(3).

EEI representatives asked how "junk mail" will handled under the requirements of paragraph (i)(1). Several Committee members pointed out that the problem of "junk mail" was addressed under Section 2.1005.

Under paragraph (i)(4), EEI representatives suggested that the deponent only be required to bring paper copies of those documents that are requested by the deposing party. The Committee agreed to revise the rule in response to this suggestion.

#### Paragraph 2.1019(j)

Several Committee members, including representatives of DOE, the State of Nevada and the environmental coalition, questioned why the NRC should be permitted to determine who should be served up for deposition. EEI representative pointed out the Section 2.720, which addresses this issue, was already referenced in the rule, and questioned the need for this paragraph on this basis.

In explaining the rationale for this provision, NRC representatives stated that they wished to provide the agency with some flexibility as to who would respond to depositions so that the discovery process would not adversely affect the ability of the agency to complete its license review and evaluation responsibilities. They stated that they would be willing to drop this paragraph entirely and simply rely on the reference to Section 2.720. Several Committee members pointed out that Section 2.720 was intended to address situations where NRC staff were involved in several licensing proceedings at the same time. They stated that this was not only no longer an issue in reactor licensing, it was simply irrelevant to the licensing of the HLW repository.

NRC representatives did not agree to take away the discretion that would be reposed in the agency as per this paragraph, or by reference to Section 2.720. The other members of the Committee asked that the minutes reflect that, with the exception of the NRC, all other members of the Committee were in agreement as to removing this discretionary authority from the NRC, thereby subjecting the NRC to the same requirements as the other parties to the proceeding.

#### Section 2.1020 - Entry upon land for inspection and other purposes

NRC representatives suggested that a response to a request for entry upon land be made within 10 days, rather than 30 days as specified in paragraph 2.1020(d) of the draft rule. They explained that the 30 day requirement was based on the existing rule which included the production of documents. Since this will not be necessary with the use of the LSS under this rule, they believed that 10 days would be a sufficient period to respond to such a request. The Committee agreed to make this change.

#### Section 2.1021 - First Pre-hearing Conference

Several Committee members noted that paragraph (a) would be revised to indicate that one of the functions of the first pre-hearing conference will be to set a schedule for completion of the discovery process if the package of tentative agreements discussed above were to be adopted by the Committee (see below).

The Committee agreed to strike the words "and may be conducted by teleconference" from the only sentence in paragraph (c), such that the sentence would read: "A pre-hearing conference held pursuant to this section shall be stenographically reported."

#### Section 2.1022 - Second Pre-hearing Conference

Once again, Committee members noted that paragraph (a) would be revised to indicate that one of the functions of the second pre-hearing conference will be to set a schedule for completing discovery on any amended contentions if the package discussed above were to be adopted (see below).

Committee members agreed to change the words "within seventy days" to "no later than seventy days" in introductory sentence of paragraph (a).

#### Section 2.1023 - Immediate effectiveness of initial decision

Nevada representatives referred the Committee to the proposal that they had submitted at the last meeting concerning this section. They explained that their first proposal was to remove this section of the rule entirely. As an alternative, they proposed that the words "and the parties to the proceeding have no right to file pleadings with the Commission with regard to this supervisory examination" be stricken from both the second to last sentence of paragraph (c)(1) and the last sentence of paragraph (c)(2). The Committee agreed to make this change, as well as several other minor editorial changes to this section of the rule.

#### Process Check at the Beginning of the Second Day

The Committee began the second day of the meeting by agreeing to circle back to the beginning of the rule to discuss each section in an effort to resolve any issues which remained unresolved. In addition, it was agreed that Committee members would raise issues of concern with respect the language used in the preamble or "Supplementary Information" to the rule when discussing that section of the rule to which the concerns were related, rather than going through the preamble separately.

#### Section 2.1000 - Scope of the Subpart

No suggestions for changes were made to this section of the rule.

#### Section 2.1001 - Definitions

Several Committee members stated that the definition for "circulated draft" as specified in the draft rule and discussed on page 8 of the Supplementary Information (SI) was confusing. It was agreed that the definition and the discussion of the definition should be separated into two parts -- one part dealing with documents that become final and the other part dealing with documents that do not become final.

It was agreed that the definition of "LSS Administrator" should be changed so that it would be clear that the LSS Administrator will not be a party to the proceeding, in addition to not being in any organizational unit which represents the NRC as a party to the proceeding.

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

DOE representatives proposed and the Committee agreed to change the words "contractual arrangements" as found in the third

paragraph on page 7 of the SI to "grant requirements." DOE representatives also asked whether the fact that the topical guidelines will be published as a regulatory guide will either expand or contract the rule. NRC representatives responded that it would not.

#### Section 2.1003 - Submission of material to the LSS

At the suggestion of the NRC, the Committee agreed to combine paragraphs (a) and (b) such that the meaning of these provisions would be made clearer and redundant language would be removed.

With respect to paragraph (c)(1), DOE representatives stated that they did not think it was fair that they will be required to submit an ASCII file for all "acquired" documents. It was agreed that if a party acquires a document from a non-party, other than one of its own contractors, that it only be required to submit an image, rather than an ASCII file of that document to the LSS Administrator.

It was proposed that the words "formally registered" as found in the first full paragraph on page 8 of the SI should be changed to read "registered in writing," and the last sentence of that same paragraph should include the words "searchable full text" prior to "entry."

In discussing that same paragraph on page 8 of the SI, DOE representatives asked NRC when they believed parties and potential parties should have their internal records management systems in place. NRC representatives responded that this should be accomplished no later than 30-60 days after the effective date of the rule.

DOE representatives asked what the meaning of the word "operational," as found in the second full paragraph on page 9 of the SI, was intended to be. They stated that for them, this word meant that the system was ready to receive documents as opposed to being fully loaded. DOE representatives also expressed concerns about including the estimate that they LSS will be "operational" approximately two years before the license application is submitted. The Committee agreed that the reference to the two year estimate and the use of the term "operational" should be removed such that the sentence where these words are found on page 9 of the SI would read as follows: "... the Commission anticipates that the parties and potential parties will have access to the LSS well before the license application is submitted. The Committee also agreed to make similar changes to the top of page 5 of the SI, and anywhere else in the rule or preamble where this terminology is used.

Representatives of EEI questioned whether there were any time requirements for submitting "backlogged" documents into the LSS for parties other than the DOE. NRC representatives stated that there was no provision in the rule which addressed this issue. The Committee agreed that all parties should be subject to the same requirements as the DOE. That is, all parties will be required to submit images, or in the case of the NRC, ASCII files, of all "backlogged" documents to the LSS administrator no later than six months prior to the scheduled date upon which the license application is likely to be submitted.

The spokesperson for the environmental coalition stated that although the coalition had reserved judgment on paragraph (d) of this section at the last meeting, they now found the language used in this paragraph to be acceptable.

EEl representatives stated that paragraph (e) does not discuss how classified information pursuant to Subpart I should be handled regarding requirements for bibliographic headers. The Committee agreed that it should be clarified in the SI that nothing in the rule would require parties to submit headers for classified information.

EEl representatives stated that paragraph (f) did not address third party documents. It was suggested that the words "third party" be added to this paragraph, but it was pointed out that the language assumes that the party to whom the request is being made has access to the LSS, which would not be true in the case of a third party. NRC representatives stated that this paragraph is intended to serve as a safety valve for catching documents that are not otherwise captured through other provisions. It was agreed that if a party intended to rely on a third party document, it would be required to enter a copy of that document into the LSS.

EEl representatives stated that Section 2.1003 did not specify a specific date that can be used to determine how far back in time parties, particularly DOE, would have to go to meet the requirements of the rule with respect to the entry of "backlogged" documents. They stated that, from their perspective, the rule seems to place an affirmative obligation on DOE to go through all of its archives to locate and enter documents that fall within the subjects specified in the topical guidelines. NRC representatives stated that the discussion of this section of the rule in the SI is intended to make it clear that no party is under an affirmative obligation to look at all documents that it may have archived. DOE representatives stated that the crucial test will come when they attempt to gain certification for substantial compliance with the LSS rule. They stated that it was their understanding that unless the archived document was considered or was intended to be relied upon, there is no affirmative obligation on them to go through all archived documents.

EEl representatives stated that paragraph (i)(3) did not make it clear whether and to what extent Subpart J could be used if DOE comes into substantial compliance after submitting the license application under Subpart G. After a lengthy discussion it was clarified that these provisions were meant to provide DOE with two choices if it was unable to obtain certification of substantial compliance: 1) DOE could submit the application under Subpart G; or 2) DOE could attempt to come into compliance and submit the application under Subpart J. If the first course was selected, paragraph (i)(3)(ii) was intended to allow the Commission, at the request of one of the parties, to specify the extent to which any of the presumably beneficial aspects of Subpart J could be applied to the Subpart G proceeding. It was clarified that if DOE submits the application under Subpart G and later gains certification regarding "substantial compliance with Subpart J" and wishes to take full advantage of Subpart J, DOE would be subject to what would amount to a six month waiting period since Subpart J requires DOE to obtain certification of

substantial compliance six months in advance of submitting the application.

#### Section 2.1004 - Amendments and Additions

DOE representatives estimated that they will be entering approximately 18,000 pages per day during the pre-application phase and approximately 10,000 pages per day during the post application phase, and they were concerned that five days would not be enough time for them to verify that documents had been entered correctly. Several Committee members questioned whether this estimate pertained to the pre- or post application period since paragraph (a) allows 60 days for verification during the pre-application period and five days during the post application period. DOE representatives did not have a response to this question.

The Committee agreed to change the word "submitted" to "docketed," and add the words "make reasonable efforts to" prior to the word "verify" in paragraph (a).

EI representatives asked what error rate will be acceptable respecting the accuracy of documentary material that is entered into the LSS. DOE representatives responded that the goal for system design purposes will be an error rate of 1% or less.

#### Section 2.1005 - Exclusions

NRC representatives proposed, and the Committee agreed to change the word "generally" to "readily" in paragraph (f), and the Committee agreed to include a new paragraph (g) which would specify that classified information pursuant to Subpart I would be excluded from entry into the LSS.

#### Section 2.1006 - Privilege

There were no suggestions for changes to this section of the rule.

#### Section 2.1007 - Access

EI representatives stated that the language used in paragraphs (a) and (c)(2) of this section leaves the strong impression that the system will include electronic images. It was pointed out that the definition of "images" includes hardcopy and other non-electronic forms of images. After some discussion, it was agreed that the word "from," as used in paragraph (c)(2) of this section would be changed to "at."

At the request of DOE, the Committee agreed to change the language used in the first full paragraph on page 11 of the SI, such that it would be clear that it will be possible for DOE to provide more than hard copies of its documents at its public document rooms, "consistent with current agency practices."

At the request of EI, it was also agreed to delete the word "existing" in the last sentence on page 11 of the SI.

#### Section 2.1008 - Potential parties

There were no suggestions for changes to this section of the rule.

#### Section 2.1009 - Procedures

It was agreed to insert the words "pursuant to Section

2.1003 of the Subpart" following the words "documentary material" in paragraph (b).

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

It was agreed that the word "operational," as found on page 13 of the SI, should be changed to be consistent with the language used in other sections of the rule.

At the request of EEI, the Committee agreed to change the words "relevant under," as found in paragraph (b)(1) to "within the scope of." It was also agreed that a number (5) should be added to paragraph (b) to make it clear that in ruling on any claims of withholding, the Board should determine whether the subject document is may be excluded from entry into the LSS pursuant to Section 2.1005. On the same issue, the Committee agreed to insert the words "or entry into the LSS pursuant to Section 2.1005" following the word "disclosure" in paragraph (c).

#### Section 2.1011 - LSS Management and Administration

EEI representatives questioned whether this section of the rule limited the selection of who will serve as the LSS Administrator to an employee of the NRC, or whether the person or entity who will serve in this capacity could be a contractor to the NRC. DOE representatives stated that if the LSS Administrator was to be a member of the "Source Evaluation Panel," as per paragraph (b)(2), federal law requires that this person be a federal government employee. NRC representatives stated that they agreed with DOE on this point, but they wanted the rule to provide them with the flexibility to use a contractor to handle some of the requirements of LSS administration and management.

With respect to the provisions concerning "consultation with the LSS Administrator" in paragraph (b)(1), DOE asked what would happen if there was no agreement between DOE and the LSS Administrator on system design issues. NRC representatives stated that issues that were not resolved could be brought to the Pre-License Application Licensing Board, once this Board has been established as per Section 2.1010(a). In addition, if this disagreement ultimately affected DOE's ability to obtain certification of substantial compliance with the LSS rule, it could be dealt with under the provisions which address compliance.

Representatives of the State of Nevada requested that the section of the SI that corresponds to LSS Administration be amended to make it clear that the State of Nevada does not "control" the University of Nevada Las Vegas for purposes of compliance with paragraph (c)(1). NRC representatives stated that it was their belief this is accomplished in the language that is used in paragraph (c)(1) of the rule and in the discussion of this section of the rule in the SI.

At the suggestion of EEI, the Committee agreed to strike all of the words following the words "appropriate format" in paragraph (d)(8) of Section 2.1011.

The spokesperson of the environmental coalition asked whether it was NRC's intent for the LSS Advisory Review Panel discussed in paragraph (e) will be established as an official advisory committee under the Federal Advisory Committee Act. The

NRC spokesperson stated that this was their intent, and they agreed to clarify this intent in the SI. At the request of Nevada representatives, it was also agreed to strike the term "Technical Working Group" from paragraph (e)(2) and from the top of page 14 of the SI, such that it would be clear that the advisory committee itself will perform the functions indicated. Nevada representatives stated that the committee will probably work as contemplated, but they wanted to maintain the flexibility of elevating the discussions to a higher level should this prove necessary.

At the request of a representative of the environmental coalition, it was agreed that the minutes should reflect the fact that although all Committee members were permitted to participate in the Technical Work Group, not all members were able to send a representatives to the meetings of this working group. Those Committee members who were represented in these sessions included: NRC, DOE, the State of Nevada and EEI.

DOE representatives were concerned that the rule or the preamble to the rule not set forth the precise provisions which are likely to be included in any Memorandum of Understanding that will be entered into between the NRC and DOE. They suggested that the first full paragraph on page 14 of the SI simply state that it is anticipated that such a mechanism will be used. Thus, at the request of DOE, the Committee agreed to add the words "consistent with this rule" following the word "LSS" in the first sentence of this paragraph, and to strike the remainder of the paragraph.

#### Section 2.1012 - Compliance

The Committee agreed to revise the last clause of the only sentence in paragraph (a) to read as follows: "... if the LSS Administrator has not issued the certification as per section 2.1003(h)(3) of this subpart."

It was clarified that paragraph (d) of this section was not intended to imply that parties will be relieved of their electronic mail responsibilities if they are denied access to the LSS. NRC agreed to revise the SI to make this clear. In addition, the Committee agreed to add the words "or any obligations under this subpart" at the end of paragraph (d).

Finally, the Committee agreed to strike the last sentence of the paragraph which begins on page 14 and ends on page 15 of the SI because the same could be said of the NRC or DOE, so it was unclear why Nevada was being singled out. Also, it was the sense of several Committee members that this sentence raises more questions than it resolves and is therefore probably not necessary.

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

The Committee agreed to strike the words "a duplicate of" in paragraph (a)(2) of this section.

#### Section 2.1014 - Intervention

After a lengthy discussion of paragraph (a), the Committee agreed that (a)(2)(iii) and (iv) should read as follows:



- (iii) "reference to the specific documentary material or absence thereof that provides the basis for the contention;
- (iv) the specific regulatory or statutory requirement to which the contention is relevant."

In making these changes, EEI representatives expressed some concerns regarding the removal of the words "those portions of" from (iii). These concerns seemed to be ameliorated when it was pointed out that this provision should be read in conjunction with the introductory portion of this paragraph which states that "the petition will set forth with particularity ..." EEI representatives requested, and the Committee agreed, that discussion of this section of the rule in the SI should reflect this concept. Thus, the Committee agreed to insert the words "with particularity" following the word "reference" in the first full paragraph under the intervention section on page 14 of the SI.

Representatives of the State of Nevada questioned whether the words "in addition to" were meant to be included in the last sentence of paragraph (a)(4). All other members of the Committee replied that this was their recollection of what was agreed to at the last meeting. After some discussion of the meaning of this provision, Nevada representatives agreed to leave the language as is.

Follow up on the discussion at the last meeting, EEI representatives questioned what the meaning of the word "material" was intended to be in paragraph (a)(4). The other Committee members stated that material issues are intended to refer to issues that will affect the ultimate outcome of the proceeding. NRC representatives stated that any issue that is raised concerning compliance with Sections 60.112 or 60.113 of Part 60 would be considered "material" issues. At the request of EEI's representatives, the Committee agreed to strike the last sentence of the first full paragraph on page 16 of the SI.

#### Section 2.1015 - Appeals

At the request of Nevada representatives, the Committee agreed to change the word "immediately" to "within ten days" in the discussion of this section on page 16 of the SI.

#### Section 2.1016 - Motions

Representatives of EEI questioned whether NRC's existing practice is that "oral arguments on substantive motions are liberally granted," as per the second sentence of the fourth full paragraph on page 16 of the SI. NRC representatives stated that oral arguments often expedite rather than delay decisions on motions because it allows the Board to avoid having to deal with endless motions to reconsider. Nevada representatives pointed out that oral arguments also allow the Board to be creative in solving problems that arise during the proceeding. EEI representatives stated that they would reserve judgment on this issue, pending resolution of other unresolved issues.

#### Section 2.1017 - Computation of Time

Nevada representatives asked what the term "system unavailability" was meant to imply in the last sentence used in this section of the rule. NRC representatives explained that it was meant to refer to the periods when the system was "down." The Committee agreed to replace the last sentence used in this section of the rule with language that would be similar to the following: "Days in which the LSS is unavailable for more than four hours of the working hours of any day that is counted in the computation of time will not be counted."

It was also agreed that the SI should explain this provision in more detail, stating that although the LSS is expected to be available on most weekends, some weekends will be used for repairing and maintaining the system and therefore the system will not be available on these days. Furthermore, these days will not be counted in the computation of time unless otherwise provided for in NRC rules. The Committee also agreed that the SI should explain that if a party's computer fails, but the system as a whole has not failed, this will not be grounds for an extension in the computation of time.

#### PROCESS CHECK AND CONCLUSION OF THE MEETING

The facilitator noted that the Committee had discussed all sections of the rule and that the issues that remained undiscussed included:

- o the introductory sections of the preamble;
- o the so-called "raw data" issue;
- o reconsideration of the "discovery package;" and
- o a review of the overall progress of the negotiations as it relates to scheduling the last meeting.

The Committee's discussion of each of these issues is captured below.

#### Introductory Sections of the Preamble

Representatives of the State of Nevada requested and the Committee agreed to insert the words "many of" after the word "establish" in the second sentence of the summary paragraph on page 1 of the SI.

DOE representatives proposed that page 2 of the SI should indicate that, with the exception of the NRC, the Advisory Committee was in agreement that all parties should be subject to the same provisions with respect to who can be deposed. As an alternative, it was agreed that this fact should be presented in the so-called Commission paper that will be submitted to the Commission along with the proposed rule and preamble.

DOE representatives also requested that the minutes reflect that DOE is not in agreement with the interpretation of the NWPA that is presented in the first full paragraph on page 6 of the SI in which the NRC states that the statutory differentiation between a construction authorization and a license lacks any substantive significance.

Finally, although this was not part of the introductory sections, DOE requested that page 9 of the SI include language that reflects NRC's statements earlier in the day that the agency believes that if DOE submits a complete application and if the LSS is in place approximately two years prior to the submission of the application, the three year statutory deadline for licensing can be met.

#### The "Raw Data" Issue

Representatives of the State of Nevada and DOE stated that they were in the process of developing agreed upon language to handle concerns that had been expressed at prior meetings about the inclusion of "raw data" and "field notes" in the LSS. Nevada representatives explained that this language was being developed after DOE had conducted a very informative and highly successful meeting at which they explained how the agency handled raw data and field notes. The tentative language that had been developed by these Nevada and DOE had been shared with some of the other parties and was being revised once again based on some concerns that had been expressed by NRC staff. DOE representatives explained that they intended to have language ready for consideration by the entire Committee within the next week.

#### Reconsideration of the "Discovery Package"

As noted above, NRC staff prepared language that reflected several different aspects of the Committee's discussion during the first day and presented it to the Committee on the second day of the meeting. After making additional revisions to this language, the key elements of the "discovery package" that were agreed upon by the Committee included:

- o reference to the specific provisions of the NWPA which set forth the statutory deadline in several relevant sections of the rule and the preamble to the rule;
- o inclusion of the avoidance of "undue delay" in the factors that the Licensing Board will consider in issuing protective orders under Section 2.1018(c);
- o adding requirements in Section 2.1021(a) and 2.1022(a) that the Licensing Board establish specific schedules for the completion of discovery following the first and second pre-hearing conferences which would take into account the objective of meeting the three year time schedule specified in section 114(d) of the NWPA;
- o including specific references and admonitions to the Licensing Board in the preamble to the rule that it exercise "due diligence" in attempting to complete discovery within two years after the start of the proceeding;
- o adding into Section 2.1018 the use of informal discovery and a "settlement judge" or "discovery master" to resolve disputes that arise during informal discovery; and

- o specifying that interrogatories and written depositions can only be used upon the order of the "settlement judge" or, in the event that such a settlement judge is not appointed, by order of the Licensing Board.

#### Schedule for the Next Meeting

After the Committee reviewed its progress in addressing unresolved issues, the spokesperson for the NRC agreed that it was worthwhile to conduct one last meeting to try to develop final agreements on the rule. The Committee agreed that it will keep the date of this meeting as it was currently scheduled -- July 20-21, 1988. In order to facilitate the possibility of reaching a full Committee consensus on the entire rule at this meeting, DOE representatives agreed to make a preliminary draft of their cost-benefit study available to EEI representatives in advance of this meeting, with the understanding that it was a preliminary draft that may be subject to change based on the DOE review and concurrence process.

It was announced that the July 20-21 meeting will be held once again in Reno, Nevada at the Best Western Airport Plaza Hotel. Because the next meeting will be the last meeting and there may be a lot of ground that needs to be covered before the Committee is able to reach final agreements, Committee members agreed to make travel arrangements that will allow them to participate in the negotiations all day on both July 20th and July 21st.

#### 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

Mike Baughman  
NV

Dennis Bechtel  
NV

Chip Cameron  
NRC

Barbara Cerney  
DOE

David Cross  
EEI

Jim Davenport  
NV

Stan Echols  
DOE

Melinda Kassen  
EDF

Steve Kraft  
EEI

Mal Murphy  
NV

Bill Olmstead  
NRC

David Ortman  
FOE

Jerry Saltzman  
DOE

Jay Silberg  
EEI

Harry Swainston  
NV

Dean Tousley  
NCAI

Stuart Treby  
NRC

Executive Secretary

D. Grimsley  
NRC

Facilitators

Howard Bellman  
Matt Low  
Tim Mealey

Member of the Public/Other Agency Officials

Phil Altomare  
NRC

Joyce Amenta  
NRC

Kirk Balcom  
Nevada

Avi Bender  
NRC

Steve Bradhurst  
Nye County, NV

Peter Cummings  
Las Vegas, NV

John H. Faye  
NRC

Christine Harrington  
New York University

Karen Hatch  
DOE/WMPO

John Hoyle  
NRC

Christine Kohl  
NRC

Dean Kunihiro  
NRC, Region V

Robert McPherson  
Weston

David L. Meyer  
NRC

W. Richard Pierce  
SAIC

Paul Prestholt  
NRC

Betsy Shelburne  
NRC

Stephen Spector  
CNWRA

W.R. Wells  
UNLV/Engineering

Attachment 2



May 30, 1988

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, 2.715a, 2.717, 2.718, 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 fields ~~xxxx~~

defined by the ISS Administrator that a potential party, interested governmental participant, or party must give to submit with a document or other material. The bibliographic header fields are a subset of the fields in the full header.

"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 and in which the original author or others in the concurrence process have non-concurred.

"DOE" means the U.S. Department of Energy or its duly authorized representatives.

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

"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 ~~text~~ fields 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~~ media.

"interested governmental participant" means any person 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.

"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~~ a 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.

"NRC" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"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) of this chapter, 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 sections 2.1014(a)(ii), (iii), and (iv) of this subpart.

"Personal record" means a document in the possession of individual personnel of a party, interested governmental participant, 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 or possessor's sole discretion, or documents of a personal nature that are not associated with any business of the party or potential party.

"potential party" means any person 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~~ issuance of the first pre-hearing conference order under section 2.1021(d) of this subpart, 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.

"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) The Licensing Support System is an electronic information management system containing the 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 documentary material of the license applicant and its contractors, and the documentary material of all other parties, interested governmental participants and potential parties to the high-level radioactive waste licensing proceeding, and their contractors. Access to the Licensing Support System by the parties, interested governmental participants, 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~~

(d) (b) The Licensing Support System shall include all documentary material ~~relating to the licensing of the likely candidate site for a geologic repository pursuant to part 80 of this chapter~~ not privileged under section 2.1007 2.1006 of this subpart.

(e) (c) The participation of the ~~State of Nevada~~ host State in the Licensing Support System during the pre-license application phase shall not have any effect on the State's exercise of its disapproval rights under Section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10135.

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

2.1008 2.1003 Submission of material to the ISS.

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

(1) an ASCII file, an image, and a bibliographic header, reasonably contemporaneous with its creation or acquisition, for all documentary material, including circulated drafts relating to a final decision but excluding preliminary drafts generated by, or at the direction of, a potential party, interested governmental participant, or party after the date on which such potential party, interested governmental participant or party is given access to the Licensing Support System pursuant to section 2.1008 of this subpart.

(2) an image, and a bibliographic header, and an ASCII file if available, for all documentary material including circulated drafts relating to a final decision but excluding preliminary drafts, generated by, or at the direction of, a potential party, interested governmental participant, or party before the date on which such potential party, interested governmental participant, or party was given access to the Licensing Support System pursuant to section 2.1008 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 2.1005 of this subpart, each potential party, interested governmental participant, or party, with the exception of the license applicant and the NRC, shall submit to the ISS Administrator an image, and a bibliographic header for all documentary material not submitted under paragraph (a) of this section ~~that is within the topical guidelines in Regulatory Guide 1.111.~~

(c) subject to the exclusions in section 2.1005 of this subpart, and subject to paragraphs (e) and (f) of this section, the license applicant and the NRC shall submit to the ISS Administrator—

(1) an ASCII file, an image, and a bibliographic header, reasonably contemporaneous with its creation or acquisition, 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 or the NRC after the date on which the license applicant or the NRC is given access to the Licensing Support System ~~that is within the topical guidelines in Regulatory Guide 1.111.~~

(2) an ASCII file, an image, and a bibliographic header for all documentary material including circulated drafts but excluding preliminary drafts, generated by, or at the direction of, the license applicant or the NRC before the date on which the license applicant or the NRC was given access to the Licensing Support System.

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

~~(e)(1)~~ (d)(1) each potential party, interested governmental participant, or party shall submit a bibliographic header, which includes the location of the information, for all documentary material that is not suitable for entry into the Licensing Support System in searchable full text. Such material includes for example, raw data, computer runs, computer programs and codes, field notes, core samples, maps, photographs, 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, interested governmental participant, or potential party shall submit one bibliographic header that identifies the location of vouchers for all travel specified in paragraph ~~(e)(1)~~ (d)(1) of this section.

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

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

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

(N) (h) 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.

(N)(N) (i)(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 ISS Administrator 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 its obligations under this section.

(2)(i) The Director of the Office of Nuclear Material Safety and Safeguards ISS Administrator 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 his or her appointment under section 2.1011 of this subpart.

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

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

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

(ii) If, subsequent to the submission of such application under subpart G of this part, the ISS Administrator issues the certification described in paragraph (i)(1) of this section, the Commission may, upon request by any party to the proceeding, specify the extent to which the provisions of subpart J of this part may be used in the proceeding.

(a) Within sixty days after a document has been entered into the Licensing Support System by the LSS Administrator during the pre-license application phase, and within five days after a document ~~is~~ has been entered into the Licensing Support System by the LSS Administrator after the license application has been submitted, the submitter shall verify that the document has been entered correctly, and shall notify the LSS Administrator of any errors in entry.

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

(1) submit the corrected version to the LSS 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 LSS 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 submitter shall submit any revised pages of a document in the Licensing Support System to the LSS Administrator for entry into the Licensing Support System as a separate document.

(2) The LSS 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 LSS Administrator by the ~~submitter~~ potential party, interested governmental participant, or party 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 2.1005 Exclusions.

The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to section 2/1004 2.1003 of this subpart, or through derivative discovery pursuant to section 2/1020(1)(1) 2.1019(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.

2/1007 2.1006 Privilege.

(a) Subject to the requirements in section 2/1004(a) 2.1003(e) of this subpart, the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in ~~part 2.790~~ section 2.790 of this part, including the protection of confidential financial and commercial information, and safeguards information, will be available to may be asserted by potential parties, interested governmental participants, and parties. In addition to Federal agencies, the deliberative process privilege will also be available to may also be asserted by 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, interested governmental participant, or potential party that asserted the claim to—

(i) the ISS Administrator for entry into the Licensing Support System ~~either~~ into an open access file; or

(ii) to the ISS Administrator or to a Licensing Board, for entry into a Protective Order file, if a Licensing Board so directs under ~~section~~ 2/1011(b)(4) or ~~section~~ 2.1018(f) of this subpart.

(c) Notwithstanding ~~the~~ any availability of the deliberative process privilege under section 2.790(a)(5) of this part, circulated drafts relating to a final decision not otherwise privileged, shall be submitted for entry into the Licensing Support System pursuant to ~~section~~ 2/1004(a) and 2/1004(c) sections 2.1003(a) and 2.1003(c) of this subpart.

2/1008 2.1007 Access.

(a)(1) Terminals for access to 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 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) The headers specified in paragraphs (a)(1) and (a)(2) of this section shall be available at the same time that those headers are made available to the potential parties.

~~(4)~~ (5) Public access to the searchable full text and images of all the documents in the Licensing Support System, not privileged under section ~~2.1007~~ 2.1006, shall be provided by the ISS Administrator at all the locations specified in paragraphs (a)(1) and (a)(2) of this section 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.

~~2.1007~~ 2.1008 Potential parties.

(a) A person 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 2.1013(c) of this subpart as determined in reference to the topical guidelines in Regulatory Guide \_\_\_\_; or

(2) the criteria in section 2.715(c) of this part, ~~or~~  
/////1311//The/Topical/Guidelines/in/Regulatory/Guide/1111.

(c)(1) The Pre-License Application Licensing Board shall, in ruling on a petition for access, consider —

(i) the factors set out in section 2.1013(c) of this subpart as determined in reference to the topical guidelines in Regulatory Guide \_\_\_\_;

(ii) the criteria in section 2.715(c) of this part,  
/////1111//The/Topical/Guidelines/in/Regulatory/Guide/1111.

121) ///To the extent that the Pre-license Application Licensing Board's decision to grant access to the Licensing Support System is based on paragraph 1(c)(1)(i) of this section, a decision to grant access under paragraph 1(c)(1)(i) of this section shall constitute a presumptive determination that a person filing a petition for leave to intervene or request a hearing under section 2.1013 of this subpart has made the requisite showing of interest under section 2.1013(c).

(d) Any person whose petition for access is approved pursuant to paragraph (c) of this section shall comply with the regulations set forth in this subpart, including section 2.1004 2.1003, and agree to comply with the orders of the Pre-License Application Licensing Board established pursuant to section 2.1011 2.1010 of this subpart.

1e) The presiding officer may order any of the potential parties granted access under paragraph 1(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.

#### 2.1010 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its Licensing Support System responsibilities;

(2) Establish procedures to implement the requirements in section ~~2.1002~~ 2.1003 of this subpart;

(3) Provide training to its staff on the procedures for implementation of Licensing Support System responsibilities;

(4) Ensure that all documents carry ~~a~~ the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the LSS Administrator pursuant to section ~~2.1012(d)~~ 2.1011(e) of this subpart.

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the LSS Administrator, at six month intervals designated by the LSS 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~~ documentary material has been identified and submitted to the Licensing Support System.

2.1011 2.1010 Pre-License Application Licensing Board.

(a) (1) a Pre-License Application Licensing Board designated by the Commission shall rule on all petitions for access to the Licensing Support System submitted under section ~~2.1009~~ 2.1008 of this subpart; ~~on~~ all disputes over the entry of documents during the pre-license application phase, including disputes relating to relevance and privilege; disputes relating to access to the Licensing Support System; and/or all disputes relating to ~~the~~ design and development of the Licensing Support System by the U.S. Department of Energy or the operation of the Licensing Support System by the LSS Administrator under section ~~2.1012~~ 2.1011 of this subpart, including disputes relating to the implementation of the recommendations of the LSS Advisory Review ~~Board~~ Panel established under section ~~2.1012(d)~~ 2.1011(e) of this subpart.

(2) ~~The~~ Pre-License Application Licensing Board shall be designated ~~by~~ insert/delete/six months after the effective date of the LSS regulations six months before the Licensing Support System becomes operational.

(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     ;

(2) ~~whether~~ the material is privileged or ~~confidential/commercial/or financial information~~ or is false/misleading information excepted from disclosure under section ~~2.1007~~ 2.1006 of this subpart;

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

(4) ~~if~~ is 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 participants, interested governmental participants and parties in the proceeding, ~~and~~ or 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~~ Board 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 party~~, interested governmental participant, or party who asserted the claim of withholding must submit the document to the ISS Administrator within 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 ~~2.1011(c)~~ 2.1013(c) of this subpart.

2.1012 2.1011 ISS ~~Administrator~~ 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, and in consultation with the ISS Administrator, DOE 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) With respect to the procurement undertaken in paragraph (b)(1) of this section, a representative of the ISS Administrator shall participate as a member of the Source Evaluation Panel for such procurement.

(2) (3) 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, interested governmental participant, or potential party to the high-level waste licensing proceeding, including ~~the U.S. Department of Energy~~ DOE 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~~ DOE and that of its contractors.

(2) Nothing in this subpart shall preclude the U.S. Department of Energy or any other potential party, interested governmental participant, 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 management and administration of the Licensing Support System, including the responsibility to—

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

(1) (2) provide the necessary personnel, materials, and services for operation and maintenance of the Licensing Support System;

(2) (3) identify and recommend to ~~the U.S. Department of Energy~~ DOE any redesign ~~and~~ or procurement actions necessary to ensure that the design and operation of the Licensing Support System meets the objectives of this subpart;

(3) (4) concur, within thirty days of a request from DOE, on any redesign and related procurement performed by ~~the U.S. Department of Energy~~ DOE under paragraph (b) of this section;

(5) consult with DOE on the design and development of the Licensing Support System 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) (6) evaluate and certify compliance with the requirements of this subpart under section 2.1003(j) and section 2.1012(a) of this subpart;

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

(7) (8) 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;~~

(10) establishing access protocols for raw data, field notes, and other items covered by section 2.1003(c) of this subpart;

(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 Licensing Support System operation and maintenance.

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

(2) Pending the establishment of the LSS Advisory Review Panel under paragraph (e)(1) of this section, the Technical Working Group of the NRC HLW Licensing Support System Advisory Committee will perform the responsibilities in paragraph (f) of this section.

~~(2)~~ (f) The LSS Advisory Review Panel shall ~~advise~~ provide advice to--

~~(1)~~ (1) DOE on the fundamental issues of the design and development of the computer system necessary to implement the Licensing Support System under paragraph (b) of this section; and

~~(2)~~ (2) the LSS Administrator on the operation and maintenance of the Licensing Support System under paragraph (d) of this section.

(3) The ~~advise~~ responsibilities of the LSS Advisory Review Panel shall include advice on--

(i) ~~establishing~~ format standards for the submission of information to the Licensing Support System by the parties, interested governmental participants, 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 and authority tables, ~~and application elimination process for the Licensing Support System;~~

(v) ~~establishing~~ reasonable requirements for field definition headers, the control of duplication, retrieval, display, image delivery, query response, and "user friendly" ~~usage~~ design;

(vi) other duties as specified in this subpart or as directed by the LSS Administrator.

~~2.1012~~ 2.1012 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 LSS Administrator has not certified that the license applicant is ~~not~~ in substantial and timely compliance with section ~~2.1003~~ 2.1003 of this part.

(b) (1) 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~~ it cannot demonstrate substantial and timely compliance with the requirements of section ~~2.1003~~ 2.1003 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.

(2) A person denied party status or interested governmental participant status under paragraph (b)(1) of this section may request party status or interested governmental participant status upon a showing of compliance with the requirements of section 2.1003 of this subpart. Admission of such a party or interested governmental participant under section 2.1014 of this subpart or section 2.715(c) of this part, respectively, shall be conditioned on accepting the status of the proceeding at the time of admission.

(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 suspended or terminated by the Pre-license Application Licensing Board or the Hearing Board for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-license Application Licensing Board or the Hearing Licensing Board.

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 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.

(c)(1) All filings in the adjudicatory proceeding on the license application to store and possess high-level radioactive waste at a geologic repository within an 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) Filings 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 shall 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) The manner of service, stating the name and address of the person on whom service is made, the manner and date of service, shall be shown for each document filed.

- (i) electronic acknowledgment ("delivery receipt") ; or
- (ii) affidavit of the party making the service; or
- (iii) certificate of counsel.

(5) 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) Orders 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 the a Protection 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 paper copy, and other images thereof, will also be permitted during the hearing.

2/7/03 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, and any request to participate under section 2.715(c) of this part, 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~~ within thirty days after the notice of hearing. 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, and 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) 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 ~~the~~ specific ~~portions of documents in the licensing support system~~ documentary material that provides a basis for the contention; and

(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.

(4) ~~Any party may amend its petition for leave to intervene with respect to the contentions specified in paragraph (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.~~ 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 the 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 forty days after the issuance of the SER. Any petition to amend contentions that are filed after this 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 contention raises a material issue related to the performance evaluation anticipated by sections 60.112 and 60.113 of this chapter.

(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 Atomic Energy 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;

(4) The petitioner's participation as a potential party under section 2.1008(c) of this subpart.

(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~~ 2.1015 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 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, or (iv) a Licensing Board order granting or denying a petition to add or amend one or more conditions pursuant to section 2.1014(a)(4) of this subpart, 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. The parties, interested governmental participants, or potential parties may also request that the Board certify, pursuant to section 2.718(i) of subpart G, the parties or potential parties may also seek direct 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 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.

#### 2.1017 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. Parties, no oral argument will be heard on a motion unless the presiding officer or the Commission directs otherwise. A party may be filed with a motion or an answer to a motion, stating the arguments and authorities relied on.~~

~~(e) (d)~~ The Board may dispose of motions either by order or by ruling orally during the course of a prehearing conference or hearing.

~~(f) (e)~~ Where the motion in question is a motion to compel discovery under section 2.720(h)(2) or section ~~2.1019(f)~~ 2.1018(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.

~~2.1018~~ 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. During periods of system unavailability longer than twelve hours, the time for filing will be suspended until the system is available.

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; Entry upon land for inspection, access to raw data, or other purposes pursuant to section 2.1020 of this subpart; Access to, or the production of, copies of documentary material for which bibliographic headers only have been submitted pursuant to section 2.1003(e) 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, pursuant to the methods set forth in paragraph (a) of this section, 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.~~ Discovery pursuant to section 2.1020 of this subpart shall begin during the pre-license application phase. Discovery pursuant to section 2.1019 shall begin after the notice of hearing. 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 similiar 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 it if the identity and location of persons having knowledge of discoverable matters, and if the identity of each person expected to be called as an expert witness or the meaning of the subject matter on which the witness is expected to testify, and the substance of the witness's testimony.*

*(2) (1) 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.*

~~(1)~~ (2) 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~~ for the entry upon land or property for inspection or access to raw data 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 or its contractors 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.

~~2.1019~~ 2.1019 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 LSS 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)(1) 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;
- (E) (v) marginalia.

(1) 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 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 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;

(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.

Section 2.1020 Entry upon land for inspection and other purposes.

(a) Any party may serve on any other party a request to:

(1) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of access to raw data, inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of section 2.1018 of this subpart.

(b) Service. The request may be served on any party without leave of the Commission or the presiding officer.

(c) Contents. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d) Response. The party upon whom the request is served shall serve on the party submitting the request a written response within thirty (30) days after the service of the request. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

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 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 Immediate effectiveness of initial decision.

(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 2.723 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 2.783 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 ~~as soon as~~ 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 ~~2.743(f)~~ 2.1011 of this part.

2.764 is amended by deleting paragraph (d).

(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 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 Immediate effectiveness of initial decision.

(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 in 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 *ex parte* 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—

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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 ~~2.744~~ 2.1001 of this part.

2.764 is amended by deleting paragraph (c).