

Kalman



The Conservation Foundation

August 8, 1988

MEMORANDUM

TO: HLW Licensing Support System Advisory Committee Members

FROM: Howard Bellman, Tim Mealey and Matt Low

SUBJ: Final Draft of the Rule and Minutes of the July Meeting

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Please find enclosed a copy of the final draft of the rule and preamble to the rule, as well as a copy of the draft minutes for the July 20-21, 1988 meeting.

As you will note, the final draft of the rule no longer has any comparative text. It stands complete, as per the changes agreed to at the last meeting. The NRC does not intend to make any additional changes to the document. Thus, what is attached is what will be submitted to the Commission.

The Supplementary Information to the rule does include comparative text to show where changes have been made since the last meeting. Chip informs us that these changes are of four kinds:

- 1) Specific changes that were agreed to by the Committee at the last meeting;
- 2) Changes to those sections which attempt to characterize the results of the consensus-based negotiation process;
- 3) The addition of the licensing schedule; and
- 4) Changes which attempt to clarify the meaning of certain items listed in the topical guidelines to ensure technical accuracy.

Chip would like to receive your comments on the changes to the Supplementary Information, either by mail or by telephone, no later than August 18, 1988. If he does not hear from you by then, he will assume that the changes made are acceptable.

With respect to the minutes, please review these and submit any suggestions for changes to Tim Mealey at the address or telephone number listed below. He will be able to receive your suggestions by telephone up until August 18, 1988, after which he

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will be on vacation for two weeks. If you are not able to call him by this date, please submit your comments to him in writing no later than the first week of September. If he has not heard from you by September 9, 1988, he will assume that you believe no changes are necessary.

Finally, we would like to thank all of you once again for the highly professional quality of your participation in this effort. Although we did not achieve a full consensus, we believe the end product has benefited much from the contributions that all of you made during the course of its development.

August 5, 1988

----- D R A F T -----

MINUTES OF THE HLW LICENSING SUPPORT SYSTEM  
ADVISORY COMMITTEE MEETING

JULY 20-21, 1988  
RENO, NEVADA

MEETING LOCATION AND ATTENDANCE

The ninth and final scheduled meeting of the HLW Licensing Support System Advisory Committee (hereafter referred to as the Committee) was held in Reno, Nevada on July 20-21, 1988. A list of Committee members and members of the public who were in attendance is attached hereto as Attachment 1.

OPENING BUSINESS

The facilitator suggested that the agenda for the meeting include a discussion of any changes that should be made to the minutes of the June 29-30 meeting, followed by a discussion of any final changes that Committee members wished to make to the latest draft of the rule and supplementary information to the rule. The facilitator also suggested that, after the Committee completes its discussion of the rule and preamble, it could address the issue of the cost of the LSS and the implications that this issue has on the negotiating position of the Edison Electric Institute (EEI).

Representatives of the State of Nevada stated that they would prefer to hear from EEI representatives respecting the Department of Energy's (DOE's) cost estimates for the Licensing Support System (LSS) and how the cost issue affects their

position in these negotiations before discussing and making any further compromises on the rule itself. Other Committee members expressed similar concerns, and the Committee agreed that it would start with a discussion of the cost issue and EEI's overall position at this stage of the negotiations, and then move on to the final stages of negotiation on the rule itself.

Before proceeding to the discussion of the cost issue, the Committee agreed to make several changes to the minutes of the June 29-30 meeting which will be reflected in the final version of the minutes for that meeting.

#### DISCUSSION OF THE COST OF THE LSS

##### DOE Presentation

DOE representatives began the discussion of the cost issue by explaining that they were in the final stages of obtaining concurrence from appropriate DOE officials on a cost-benefit study for the LSS. They anticipated this report will be ready for public distribution within the next week. They also explained that they had been able to supply EEI with a preliminary draft of this report, as they had promised at the last meeting. DOE representatives then went on to describe some of the findings that will be presented in the report.

DOE representatives stated that the total life cycle cost of the "base case" for the LSS will be approximately \$195 million over a period of ten years. Of this total, 70% is attributable to labor costs, including data capture and operation and

maintenance of the system. Another 16% is attributable to hardware costs (i.e., the cost of buying new computer equipment); 2% to the development of software; 7% to the cost of a facility to house the computer; 4% to telecommunication costs that would not be borne by the parties; and 3% to the cost of reproducing hardcopies of documents that are in the LSS.

As explained by DOE officials, the "base case" assumes that the LSS will be located at a single site someplace in Nevada. For comparative purposes, the DOE study looked at several alternatives, including the possibility that the LSS will be located at two separate sites, one in Nevada and one in the Washington, D.C. area. DOE representatives indicated that, with all else being equal, the estimated cost for this approach would be \$236 million. The estimated costs of several other alternatives were \$197 million for a system that relies on the use of optical disk technology and includes access to on-line images; \$196 million for a system that relies on the use of optical disk technology but contains no on-line images; \$198 million for a system that relies on the use of microform with on-line images; \$192 million for a system that relies on the use of microform without on-line images; \$210 million for rekeying "backlogged" documents, as contrasted with entering them through the use of an optical character reader in the base case; and \$207 million for the so-called minimal system which relies on the use of microform and rekeying documents.

DOE representatives explained that the report will include a sensitivity analysis on the affect that various cost factors have

on the total cost for the system, including the total number of pages, the percent of this total that must be entered in searchable full text, and the total number of simultaneous users. For example, the base case assumes 28 million pages, 100% of which will be entered into the LSS in searchable full text at a cost of \$195 million. This equates to an average cost of \$4.40 per page. If the total number of pages were reduced to 20 million, the cost would be approximately \$150 million, and with 14 million pages the cost would be \$130 million. If only 50% of the 28 million pages assumed in the base case were to be entered in searchable full text, the total system cost would be reduced to \$169 million, and if only 25% of the 28 million pages were to be entered in searchable full text the cost would be \$157 million. Finally, the base case assumes 100 simultaneous users, once again for a total cost of \$195 million. If the assumption is increased to 175 simultaneous users, the total cost would rise to \$216 million, and if the number of simultaneous users were only 50, the total system cost would be \$185 million.

DOE representatives explained how the report will address the benefits of the LSS, and concluded with a description of Appendix A of their report which will address the issue of cost savings or cost avoidance resulting from a one year timesavings in the licensing of the repository. As stated by DOE representatives, their report will show that each year that is saved in the total time it will take to license the facility will amount to a combined cost savings of \$195 million, including the avoidance of DOE "development and evaluation" costs and the costs

that utilities would have incurred in storing high-level waste on a temporary basis at their reactors. They explained that the figure of \$195 million for both the total life cycle cost of the LSS and for the estimated cost savings for each year that is saved in the time it takes to license the facility is purely coincidental. However, these figures indicate that the LSS could "pay for itself" if it can result in at least a one year timesavings in the total amount of time it will take to license the facility.

#### Questions and Answers

Representatives of the environmental coalition asked DOE what assumptions they had used regarding the percentage of documents that would be generated in ASCII format. DOE representatives stated that the base case assumes that 40% of the 28 million pages would be received in ASCII format and that the percentage of documents that require rekeying or entry into the LSS through an optical character reader (OCR) decreases over time (i.e., the percent of documents generated in ASCII format increases over time). They added that the figure of \$4.40 per page was an average cost, and that the labor cost of rekeying or OCR entry was approximately \$1.60 per page compared to \$.11 per page for the entry of ASCII documents.

NRC representatives asked how much of the estimated 70% labor cost for the LSS would have been incurred by DOE, with or without the LSS, for its internal records management system. DOE representatives stated that the analysis only covers those costs

that are above and beyond DOE's internal records management costs. That is, the study looks at the incremental cost of the LSS. Upon further questioning, DOE representatives stated that there would be some cost savings to DOE related to the avoidance of microform conversion for DOE documents that are included in the LSS, at a cost of approximately \$.10 per page. However, the LSS will not serve as DOE's records management system. As an example of the incremental nature of the analysis, DOE representatives stated that if it takes one minute to create a document header under DOE's internal records management system, and five minutes to create a document header for the LSS, the study accounts for the incremental cost of four minutes of labor time to create the LSS header.

#### Statement by the Nuclear Power Coalition

Representatives of EEI stated that they appreciated the fact that DOE was willing to provide them with a preliminary copy of the cost-benefit study, and they thanked the Committee for agreeing to give them a chance to review the DOE study prior to this meeting. They explained that they did not have time to independently verify the cost figures in the report, but they believed these figures to be accurate and the report to be of a high quality. They stated that the major problem with the report was that it was a cost comparison study rather than a cost-benefit study. That is, the report contains much information on the potential cost of the LSS and various alternatives but very little information on the potential benefits of the LSS and, in

particular, on whether the LSS is likely to assist in meeting the three year licensing objective.

EEI representatives added that all of the figures used in the report are in 1988 dollars and that it would be prudent to apply an inflation factor of 4% to the total cost. Using this rate of inflation over a ten year period, the total cost of the system rise to \$240-300 million depending on what alternative is selected. Furthermore, they stated that they believed the cost figures used in the report are likely to be low, and that the total life cycle cost for the LSS is likely to be closer to \$500 million, rather than \$240-300 million.

Representatives of the State of Nevada stated that whatever inflation factor is applied to the cost of the LSS would also have to be applied to the cost savings figures that will be identified in Appendix A of the DOE report.

With respect to the criticisms raised by EEI on the lack of information on the benefits of the LSS, DOE representatives stated that they had tried to do a benefits study over a year ago. In undertaking this effort, it became clear that it was not possible to estimate with any precision the precise time savings in the licensing process that might result from the use of the LSS. They explained that it was for this reason that they decided to include the type of analysis used in Appendix A of the report. This analysis attempts to estimate what the cost savings would be for a one year reduction in the time it takes to license the facility, without stating what timesavings DOE believes is likely to result from the use of the LSS. Thus, if the total

cost of the LSS is doubled to, say \$400 million, which they pointed out is still less than 1% of the total cost of the high-level waste repository program, a two year rather than a one year timesavings would be necessary to cover the cost of the LSS.

Representatives of the environmental coalition and the State of Nevada asked EEI's representatives if their criticisms of the DOE study meant they would not be able to take a position on the rule without a benefits analysis being conducted. EEI representatives stated that they were ready to state their position on the rule, given these preliminary cost figures, but requested that they be allowed to caucus before doing so. The Committee agreed to break for a caucus.

Before taking a break for the requested caucus, representatives of the State of Nevada stated for the record that, with some relatively minor exceptions, the State of Nevada was willing to agree with the draft rule that was currently before the Committee.

#### REPORT FROM THE CAUCUSES

(Author's note: After representatives of EEI, the Utility Nuclear Waste Management Group, and the Council for Energy Awareness, who comprise the nuclear power industry coalition in these negotiations, met on their own for a short period, they requested that the facilitators join them in their caucus. After meeting with the industry caucus, the facilitators then met with all of the other members of the Committee in a caucus format. The minutes pick up with the Committee's discussion upon

reconvening as a full group after these caucus sessions were completed.)

The facilitator reported that it was EEI's intent to withhold consensus on the proposed rule. He proposed, and the Committee agreed, that EEI be given an opportunity to explain their position after the full Committee had had a chance to go through and make any final changes to the rule and preamble that could be agreed upon. Furthermore, the facilitator proposed and the Committee agreed that each party be given an opportunity to suggest changes to the rule, one party at a time, rather than going through the rule section by section, as had been done at prior meetings. Following the discussion of the rule, each party would then be given an opportunity to make any final suggestions for changes to the Supplementary Information. And following that, each Committee member, including EEI, would be given an opportunity to state, for the record, their final position on the rule.

#### REVIEW OF THE RULE ON A PARTY-BY-PARTY BASIS

##### Department of Energy

The spokesperson for the DOE stated that he intended to send Committee members a packet of material that will include examples of the so-called raw data items which are listed in Section 2.1003(c) of the rule.

In referring to this section of the rule, which is found on page 5 of the 7-15-88 version of the draft rule (hereafter simply

referred to as the draft rule), he stated that DOE had some concerns with the requirement for "reasonably contemporaneous" entry of this type of documentary material. He acknowledged that the reasonably contemporaneous requirement was consistent with the requirements for entering other types of documentary material into the LSS, but he explained that this would not make sense for raw data because it is often collected at separate points in time and is not used until a complete set or "suite" of data has been collected. Furthermore, almost without exception, the data must be subject to quality assurance procedures before it is used by DOE in a study or assessment. Thus, he proposed that the words "reasonably contemporaneous with their creation or acquisition," as found in Sections 2.1003(c)(1) and (c)(2), be changed to read "in a timeframe to be established by the access protocols under Section 2.1011(d)(10)."

In response to this suggestion, representatives of the State of Nevada wanted it to be clear that as long as this meant that the types of documentary material to be covered by this section are entered into the LSS after the principle investigator decides that the data is in a form that it can be used, including the completion of quality assurance procedures, this change would be acceptable.

The Committee agreed to make the language change suggested by the DOE for Sections 2.1003(c)(1) and (c)(2). In addition, the Committee agreed that the Supplementary Information (SI) to the rule should specify that the access protocols should make every attempt to ensure that any collection or "package" of

documentary material, as the term is used in Section 2.1003(c)(3), which relates to a study, should be submitted reasonably contemporaneous with the completion of such a "package," including any quality assurance that might be necessary.

The next issue raised by DOE representatives did not include a suggestion for changing the draft rule. Instead, DOE representatives clarified DOE's position in reference to Section 2.1019(j), found on page 26 of the draft rule. DOE representatives stated that it was their understanding that, with the exception of the NRC, all other Committee members did not agree with this provision. NRC representatives acknowledged that this was their understanding as well, and stated that it was their intent to make this clear in the so-called Commission Paper that will be submitted to the Commission along with the proposed rule.

Finally, at the suggestion of DOE, it was agreed that the term "license applicant" should be changed to "the Department of Energy" throughout the rule.

#### Nevada Local Governments

The representatives of Nevada local governments indicated that they did not have any suggestions for changes to the rule.

#### National Environmental Coalition

The spokesperson for the environmental coalition suggested that the word "material" be deleted from Section 2.1014(a)(4), as

found on page 18 of the draft rule. She stated that the word is redundant since NRC has stated that any issue that is "related to the performance evaluation anticipated by section 60.112 and 60.113" will be considered a "material" issue.

The spokesperson for the NRC stated that the minutes for the last meeting, and the statement made by the spokesperson for the environmental coalition, correctly reflect the NRC's position that any issue concerning compliance with section 60.112 or 60.113 will be considered a "material" issue. That is, it will be considered to be an issue that has practical consequences to a final decision on the licensing of the repository. Thus, the spokesperson for NRC agreed that the use of the word "material" in this section was redundant. However, the NRC spokesperson stated that the language used in that particular sentence was intended to signify that a higher standard was being used for the admission of amended contentions and that the NRC did not have any problem with leaving the wording as is.

The environmental spokesperson stated that the problem with leaving the word in, is that it invites unnecessary argument about whether a particular amended contention is of material consequences or not.

Representatives of the State of Nevada stated that, since this provision was included in the draft rule at their request, they would prefer that the language be left as it is. Therefore, no changes were made to this section.

The environmental spokesperson suggested that sections 2.1014(b)(1) and (b)(2) be combined and that the time requirement

for filing an answer to a petition for leave to intervene and a petition to amend contentions both be twenty days (under the 7-15-88 version of the draft rule, the time requirement for the latter was only 10 days). With the exception of EEI, whose representatives suggested that these provisions be left as is, the Committee agreed to make the change suggested by the environmental coalition.

At the suggestion of the environmental coalition, the Committee agreed to add the words "in a timely fashion" to the end of the last sentence of Section 2.1019(a)(2), as found on page 22 of the draft rule. The spokesperson for the environmental coalition explained that if the avoidance of delay was going to be a factor for the Board to consider in granting the use of interrogatories and written depositions on the "back end" of the process, it should also be a factor that should be considered on the "front end" of the process (i.e., whether informal requests for information are responded to in a "timely fashion.")

At the suggestion of the environmental coalition, the Committee also agreed to add the words "or as subsequently amended" to the end of the third sentence of Section 2.1010(b)(1), as found on page 22 of the draft rule; and to change the word "shall" to "may" in Section 2.1018(g) on page 24 of the draft rule.

### National Congress of American Indians

The representative of the National Congress of American Indians (NCAI) stated that NCAI did not have any suggestions for substantive changes to the rule. As an editorial matter, however, he suggested and the Committee agreed to strike the word "not" from section 2.1005(f), as found on page 8 of the draft rule.

### State of Nevada

At the suggestion of the representatives of the State of Nevada, the Committee agreed to change the words "the time for filing will be suspended until the system is available, unless otherwise ordered by the Board," as found at the end of the last sentence in Section 2.1017, on page 21 of the draft rule, to "that day shall not be counted in the computation of time."

Nevada representatives asked whether any objections that are raised pursuant to Section 2.1020(d), as found on page 27 of the draft rule, are reviewable by the Pre-Application Licensing Board (PALB) or the Hearing Licensing Board (HLB). The NRC spokesperson stated that such objections would be reviewable by the either licensing board, as would all disputes related to discovery. The Committee agreed that Section 2.1010(a)(1) of the rule should make it clear that the PALB has the authority to rule on all disputes related to the discovery process.

## Nuclear Regulatory Commission

NRC representatives asked whether other Committee members thought it might be necessary to add language to Section 2.1011(c)(1) regarding the relationship between the State of Nevada, as a party to the proceeding, and the University of Nevada, Las Vegas (UNLV), which has been named by Congress as being the site where the LSS will be located. Representatives of the State of Nevada stated that UNLV has an independently elected Board of Directors and, for this reason, they did not feel that it was necessary to add language to the rule clarifying there is in fact no formal relationship between UNLV and the State of Nevada for purposes compliance with this provision.

NRC representatives questioned whether there might be a need to limit the number of participants on the LSS Advisory Review Panel under Section 2.1011(e)(1) and the interim LSS Advisory Committee under Section 2.1011(e)(2). Nevada representatives questioned whether it was appropriate for members of the present Advisory Committee who dissent from this rule to be members of either of these two bodies.

NRC representatives proposed language changes to 2.1011(e)(2) that would limit the membership of the interim advisory committee to those members of this Advisory Committee who agree to support the proposed rule, giving the Commission the authority to appoint "such other members as the Commission may from time to time determine is necessary to perform the functions (that are envisioned for this body)." In addition, they suggested language changes to Section 2.1011(e)(1) that would

guarantee those members of the interim advisory committee established under (e)(2) who wish to serve as members of the LSS Advisory Review Panel (ARP) under (e)(1) an opportunity to do so. The NRC proposed that the LSS Administrator be granted the authority to appoint additional members to the ARP, "consistent with the requirements of the Federal Advisory Committee Act (FACA)." NRC representatives explained that the balanced participation requirements of FACA would likely require the NRC to have some form of industry participation on the ARP, but the language they proposed provided some flexibility as to who this might be.

Representatives of the State of Nevada suggested that, as an alternative to the NRC proposal, they would agree to remove the requirement that the ARP be required to operate by consensus, as per Section 2.1011(d)(1). They stated that, as a practical matter, it would be better to have the industry's perspectives represented on the ARP, rather than trying to deal with their concerns after the fact.

EI representatives stated that they favored Nevada's proposal over the NRC's proposal. They requested that the minutes reflect their dissent to the possibility that the nuclear power industry would be excluded from participation on either of these two bodies. They stated that the industry will continue to have legitimate cost related concerns regardless of the position it will take on this particular rule.

DOE representatives stated that they preferred NRC's proposal over Nevada's proposal. They explained that they not

only wanted to protect their ability to veto proposed system design changes through the use of consensus decision-making by the ARP, they also wanted the LSS Administrator to have "clear marching orders" in the event that there is a consensus within the ARP. They questioned whether EEI's participation on the ARP would amount to a permanent veto over any proposed system design, regardless of what it might cost, because of its dissent to this rule.

NRC representatives reiterated that their proposed language changes, which include a reference to FACA, would likely result in some form of industry participation. Committee members asked NRC to state once again the precise language change that they proposed for these sections. NRC indicated it was as follows:

(e)(1) The LSS Administrator shall establish an LSS Advisory Review Panel comprised of the LSS Advisory Committee members identified in paragraph (e)(2) of this section who wish to serve within sixty days after designation of the LSS Administrator pursuant to paragraph (a) of this section. The LSS Administrator shall have the authority to appoint additional representatives to the Advisory Review Panel, consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I.

(e)(2) Pending the establishment of the LSS Advisory Review Panel under paragraph (e)(1) of this section, the NRC will establish a Licensing Support System Advisory Committee whose membership will initially include the State of Nevada, the coalition of affected units of local government in Nevada who participated in the HLW Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups who participated in the HLW Licensing Support System Advisory Committee, and such other members as the Commission may from time to time determine to perform the responsibilities in paragraph (f) of this section.

Representatives of the environmental coalition suggested that the words "shall have the authority to appoint" in proposed paragraph (e)(1) be changed to "shall appoint." Both NRC and DOE indicated that they objected to this proposal. As an alternative, the environmental coalition proposed that the following be added to the end of paragraph (e)(1):

"... giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the NRC's HLW Licensing Support System Advisory Committee."

Representatives of NRC and DOE indicated that this amendment would be acceptable. The facilitator then asked if there was any dissent to the language as proposed by the NRC and amended by the environmental coalition. With the exception of EEI, all other Committee members indicated that the language was acceptable.

#### Nuclear Power Industry Coalition

Representatives of the nuclear power industry coalition, including EEI/UNWGM and CEA, stated that although they planned to exercise their right to dissent from the proposed rule, the suggestions that they were about to offer for changing the text were an effort to improve the overall quality of the rule. Other Committee members indicated that they were willing to consider these changes but stated that they had some concerns about this approach because it would allow EEI to have "two bites at the apple."

In the definitions section, at the suggestion of EEI, the Committee agreed to:

- o delete the words "stored on a magnetic medium" from the definition of "ASCII File" on page 1 of the draft and change the definition to read as follows: "a computerized text file conforming to the American ..."
- o change the words "within the above definition" to "meeting the above criteria" in the definition of "circulated draft" on page 2 of the draft rule.

EEI representatives suggested that, in addition to referencing the exclusions in Section 2.1005, the exclusions under Section 2.1019 should be also be referenced in Section 2.1003(a). Other Committee members disagreed, pointing out that the items listed under Section 2.1019 could be obtained through derivative discovery and thereby entered into the LSS.

EEI representatives pointed out that there was no requirement in the rule that parties and potential parties, other than the NRC and DOE, make a good faith effort to submit their "backlogged" documents any sooner than six months before the license application is scheduled to be submitted, as per Section 2.1003(a)(2). Other Committee members stated that these other parties are not likely to have very many backlogged documents. Nevada representatives stated that they believed they had a pretty good idea of how many backlogged documents they had and that they were ready and willing to submit them for entry into the LSS within 90 days after the effective date of the rule. They added that they very much want to these documents to be entered into the LSS, as they had indicated very early in this

process when the gave DOE a list of priorities for entering information into the LSS. The Committee agreed that language should be added to the Supplementary Information that would state that parties and potential parties should attempt to submit backlogged documents as soon as possible after they have been granted access to the LSS.

At the suggestion of EEI, the Committee agreed to add language to section 2.1003(b)(2) that would be consistent with the language used in paragraph (a)(2) of the same section, regarding the requirement to submit information no later than six months in advance of the submission of the license application.

At the suggestion of EEI, the Committee agreed to change the word "documentation" as used in section 2.1003(c)(2) to "documentary material."

At the suggestion of EEI, the Committee agreed to add the words "general distribution memoranda" to the items listed in section 2.1005(c).

EEI representatives pointed out that the Committee had agreed to change Section 2.1010(a)(2) to read as follows: "The Pre-License Application Licensing Board shall be designated six months before access to the (LSS) is scheduled to be available."

At the suggestion of EEI, the Committee agreed to add the words "for documentary material" following the words "records management system" to Section 2.1011, such that it would be clear that the LSS could be used by any party, potential party, or interested governmental participant, as an internal records management system only for documentary material that is otherwise already included in the LSS.

In referring to Section 2.1012(c) where the words "Hearing License Board" are used for the first time, at the suggestion of EEI, the Committee agreed that the rule should make consistent references to the different types of boards and to do so earlier in the rule. In addition, it was agreed that the term "presiding officer" should be changed to "board" throughout the rule.

In referring to Section 2.1015, EEI representatives asked whether a mistake had been made in not including paragraph (c) as well as paragraph (b) as exception to the requirements stated in paragraph (d) of that same section. Other Committee members indicated that no mistake had been made and that only paragraph (b) should be so referenced.

EEI representatives asked whether the main problem that was being addressed under Section 2.1017 - Computation of Time, was the unavailability of the electronic mail component of the LSS. DOE representatives indicated that it was unlikely that the "E" mail portion of the system would crash independently of the system as a whole. EEI representatives did not suggest any changes be made to this section.

EEI representatives asked whether the use of informal discovery, pursuant to Section 2.1018(a) would take place during the pre- or post application period. (Author's note: the 7-15-88 draft misnumbered the "Discovery" section as 2.1019.) Other Committee members indicated that it will take place during both periods, however, NRC representatives stated that it would not be possible to compel the use of any discovery methods until after the application is submitted and the NRC has the authority to

issue such an order. At the suggestion of EEI, the Committee agreed to add language to the Supplementary Information that would indicated that informal requests for information can begin during the pre-license application period even though no orders or sanctions can be applied by the Board or discovery master until after the application is submitted.

At the suggestion of EEI, the Committee agreed to strike the words "potential party" from paragraph (e)(1) of section 2.1018 because the provisions stated in this paragraph can only be applied after the license application has been submitted when "potential" parties are no longer relevant.

At the suggestion of EEI, the Committee agreed to add the words "construction authorization or" before the word "license" as used in the second-to-last sentence of paragraph (c)(2) and the first sentence of paragraph (c)(3) in Section 2.1023.

#### REVIEW OF THE PREAMBLE TO THE RULE ON A PARTY-BY-PARTY BASIS

The facilitator stated that it would obviously be necessary for the characterization of the outcome of the negotiated rulemaking process, as found on page 2 of 7-15-88 version of the Supplementary Information (hereafter simply referred to as the "SI"), to be revised as a result of the position that the nuclear power industry coalition will be taking. He then asked each party to make any final suggestions for changes to the preamble and for the Committee to discuss these on a party-by-party basis, as the Committee had done with the rule itself.

### Department of Energy

DOE representatives reiterated the position that they had taken at previous meetings regarding their disagreement with NRC over the NRC's refusal to distinguish between a license to operate the HLW repository and a construction authorization for the repository. Thus, they indicated that they will be commenting negatively on the paragraph that begins on page 5 and ends on page 6 of the SI.

At the suggestion of DOE, the Committee agreed to add the words "by all parties, potential parties and interested governmental participants" following the word "submitted" in the first sentence of the first paragraph under the heading "Topical Guidelines" on page 20 of the SI.

### Nevada Local Governments

Representatives of Nevada local governments indicated that they did not have any suggestions for changes to the SI.

### National Environmental Coalition

Representatives of the environmental coalition pointed out that the third full paragraph on page 5 and the second full paragraph on page 14 of the SI would have to be revised to conform with the agreements that were reached in the rule itself.

In reference to the discussion of Section 2.1002 of the rule on page 7 of the SI, environmental representatives asked what will happen to contractor reports that are completed but not delivered to the DOE. DOE representatives indicated that they

would likely be entered into the LSS under the so-called raw data provision (see Section 2.1003(c)(1)). At the suggestion of the environmental coalition, the Committee agreed that this should be stated more clearly in the SI.

Representatives of the environmental coalition proposed and the Committee agreed to delete the reference to "written objections" in the discussion of the definition of "circulated draft" which is found on the bottom of page 8 and the top of page 9 of the SI since the Committee had agreed to drop this requirement in the rule itself.

A representative of the environmental coalition stated that the Committee cannot predict the extent to which computer technology might advance over the next ten years. Therefore he reasoned, the issue of remote access to the LSS by members of the public should be decided by the LSS Administrator at some later date, rather than by this Committee at this point in time. In response to this concern, at the suggestion of the environmental coalition, the Committee agreed to delete the second and third-to-last sentences from the paragraph that begins on page 11 and ends on page 12 of the SI.

Other changes that the Committee agreed to make at the suggestion of the environmental coalition included:

- o Inserting the word "both" prior to the words "as evaluated," in the last sentence of the first paragraph on page 13 of the SI.
- o Adding the words "person or" prior to the word "organization" in the fourth sentence of the paragraph that begins on page 13 and ends on page 14 of the SI.

- o Adding the word "service" prior to the word "responsibilities" in the last sentence of the second paragraph on page 15 of the SI.

The spokesperson for the environmental coalition suggested deleting the sentence that had been added to the second full paragraph on page 16 of the SI, under the discussion of Section 2.1014 of the rule. This sentence reads as follows: "This provision only applies to the SER itself, and not to any supplements to the SER." The environmental spokesperson stated that this language was contrary to her understanding of the agreements that had been reached at previous meetings. She stated that this sentence raises a number of questions about when the SER is actually complete. Representatives of NCAI and the State of Nevada indicated that they would agree to deleting this sentence. Representatives of DOE indicated that they wished to keep the sentence in because it made it clear when the cut-off for amended contentions would be applied.

Representatives of NRC stated that, as a matter of practice, if there are substantive supplements to the SER which result in amended contentions, the Board will allow those amendments to stand regardless of what the preamble to this rule might say. The Committee then discussed whether the SER was really complete if, when it is issued there are still major gaps to be filled in through the use of "supplements." It was suggested that the word "non-substantive" be added to the sentence such that it would read as follows: "This provision only applies to the SER itself, and not to any non-substantive supplements to the SER." The Committee was unable to agree on how to deal with this issue and decided to come back to it later in the meeting.

(Author's note: Later in the meeting, DOE representatives indicated that DOE would agree to removing the sentence on page 16 of the SI which referred to limitations on the filing of amended contentions being tied to the SER rather than any supplements to the SER. However, DOE representatives indicated that DOE wished to retain its right to comment on this matter.)

The spokesperson for the environmental coalition stated that the discussion of Section 2.1018 of the rule on pages 17-19 of the SI, needs to deal with the possibility that the "discovery master" may never be appointed. At the suggestion of the environmental coalition, the Committee agreed to add to the end of the last sentence of the paragraph that begins on page 17 and ends on page 18 of the SI the following: "or by the Board if no discovery master is appointed."

#### National Congress of American Indians

A representative of NCAI asked what the meaning was of the words "full text search capability of full headers," as found in the third sentence of the last paragraph on page 11 of the SI. NRC representatives responded that this meant that the public would be able to conduct "full text searches" on the text of the "full headers" that will be available in public document rooms during the pre-license application phase.

NCAI representatives did not have any suggestions for changes to the SI.

## State of Nevada

At the suggestion of Nevada representatives, the Committee agreed to qualify the language used to describe the objectives of the LSS that are listed on page 2 of the SI. Thus, the second and third objective would read as follows:

- providing full text search capability of much of the potentially relevant licensing information; and
- providing for the electronic submission of much of the formal papers during the licensing proceeding.

In referring to the last sentence of the last paragraph in the "Background" section of the SI (second full paragraph on page 6 of the SI), Nevada representatives stated that they wished to see a better standard than "information that is reasonably available at the time of docketing" regarding the determination of completeness for the license application. NRC representatives stated that the determination of completeness will be governed by Part 60. The Committee agreed to strike to last clause of this sentence, such that it would read as follows:

"For this reason, the Commission regulations call for the application to be as complete as possible. 10 CFR 60.24(a)."

At the suggestion of Nevada representatives, the Committee agreed to add the words "or other easy access to" following the words "full text search capability of" in the first paragraph under the discussion of Section 2.1002 on page 7 of the SI.

At the suggestion of Nevada representatives, the Committee agreed to add a clause to the last sentence of the last paragraph

under the discussion of section 2.1002 of the rule on page 8 of the SI, such that this sentence would read as follows:

"These independent rights consist of statutory rights under such statutes as the (FOIA) and the (NWPA) as amended, or rights derived from grant requirements such as those between DOE and the State of Nevada."

Nevada representatives reminded NRC that, in addition to the conforming amendments that had been identified by the environmental coalition, the second paragraph on page 9 of the SI would also have to be revised for the same reason.

#### Nuclear Regulatory Commission

Representatives of the NRC stated that they intended to include a timeline of the licensing process at the end of the SI, similar to the one that the Committee had seen before. All Committee members indicated that they thought that this would be a useful thing to do.

NRC representatives had no other suggestions for changes to the SI.

#### Nuclear Power Industry Coalition

At the suggestion of EEI representatives, the Committee agreed to make the following changes to the SI:

- o To delete the word "interrogatory" and change the word "involving" to "including" in the third sentence of the second paragraph on page 2.

- o To change the word "all" to "its" in the fifth sentence of the second paragraph under the discussion of Section 2.1002 on page 7.
- o To add the words "or acquired" following the word "generated" in the fourth sentences of the first paragraph under the discussion of Section 2.1003 on page 8.
- o To strike the words "it is in" and add the words "has been certified" following the word "compliance" in the first sentence of the first full paragraph on page 10.
- o To strike the words "any alleged" prior to the words "errors" in the fourth sentence of the first paragraph under the discussion of Section 2.1004 on page 10.
- o To change the word "may" to "shall" in the first sentence of the second paragraph under the discussion of Section 2.1004 on page 10.
- o To strike the word "enter" and add the words "submitted to the LSS Administrator for entry" following the words "must be" in the only sentence of the third paragraph under the discussion of Section 2.1004 on page 10.
- o To revise the language used in the fourth sentence in the first paragraph under the discussion of Section 2.1006 on page 11 as follows: "As in any NRC adjudicatory proceeding, the Board may rule that the release of privileged or excepted material is necessary to a proper decision in the proceeding, or may rule on the disclosure of a document under protective order."
- o To revise the language used in the first part of the last sentence of the last paragraph under the discussion of Section 2.1008 on page 13 as follows: "An LSS participant's access to the LSS obligates it to comply with ..."
- o To provide a more detailed explanation of "access hours" in the discussion of Section 2.1017 on page 17.
- o To change the word "meeting" to "frustrating" in the third sentence of the second full paragraph on page 18.
- o To change the word "within" to "not later than" in the second sentence of the only paragraph under the discussion of Section 2.1022 on page 19.
- o To add the words "and Nellis Airforce Base" to the end of the sentence under the item listed as #8 on page 22.

STATEMENT BY THE NUCLEAR POWER INDUSTRY COALITION

With the discussion of changes to both the rule and the preamble to the rule complete, the facilitator asked the representatives of the nuclear power coalition to state for the record their position of this rulemaking effort, as they had agreed to do in the caucus sessions earlier in the day.

The spokesperson for the coalition, who is also the spokesperson for EEI, then read from a prepared text. (Author's note: Rather than characterizing this statement in these minutes, a copy of the prepared text has been appended hereto as Attachment 2).

After the coalition spokesperson had finished his presentation, the facilitator asked if there were any questions and the other members of the Committee indicated that there were not.

PROCESS CHECK

The facilitator indicated that the agenda for the second day of the meeting was to review a revised and final version of the rule, as per the agreements that had been reached earlier in the day; and to provide all parties with an opportunity to state for the record their final positions on the rule.

Representatives of the State of Nevada requested that they be provided an opportunity to meet in a caucus session with the other members of the Committee, with the exception of the industry coalition, prior to stating their final position on the rule. The Committee agreed to allow for such a caucus.

## DAY TWO: REVIEW OF THE FINAL DRAFT

NRC representatives distributed copies of the "final draft" of the rule (which is appended hereto as Attachment 3) and stated that this final draft included all of the changes that had been agreed to yesterday, with the exception of the "global" changes which will result in the words "license applicant" being changed to "DOE" and the words "presiding officer" being changed to "Board." Committee members were given some time to review this final draft before commenting.

Upon reconvening, EEI representatives questioned whether the NRC will be establishing a new advisory committee under Section 2.1011 (e)(2) which will be subject to the FACA requirements concerning balanced membership. EEI representatives pointed out that the final draft references FACA in paragraph (e)(1) but does not reference FACA in paragraph (e)(2) of Section 2.1011. NRC representatives responded that the rule does not say that industry will not be represented in the interim body to be established under paragraph (e)(2), it simply provides the Commission with some flexibility regarding who might represent industry.

With no suggestions for changes to the language used in the "final draft," the Committee agreed to break for a caucus.

## REPORT FROM THE CAUCUS SESSION

Upon reconvening in a full Committee setting, the facilitator indicated that the members of the Committee who

intended to support the "final draft" of the rule had agreed not to comment negatively on the initial notice of proposed rulemaking unless the Commission itself proposes an alternative to the rule they had agreed to support. The spokesperson for the NRC stated that the transmittal paper to the Commission that will accompany the Committee's "final draft" will strongly recommend that the Commission adopt this rule. However, if the Commission chooses to publish an alternative rule, such an alternative will be published along with the version of the rule that this Committee agreed to. In addition, he stated that the Commission intends to provide opportunity for public comment in two stages, such that the members of this Committee who agree to support the rule, will be given an opportunity to comment on the comments that are submitted by Committee members, and others, who choose to oppose this rule.

#### FINAL POSITIONS AND COMMENTS BY COMMITTEE MEMBERS

For purposes of establishing a formal record of the final positions of the members of the HLW Licensing Support System Advisory Committee, the facilitator asked whether there was any dissent from the "final draft." Representatives of the coalition of nuclear power industry groups, including the Edison Electric Institute and its Utility Nuclear Waste Management Group and the U.S. Council for Energy Awareness, indicated that they dissented from the final draft. The facilitator indicated that the record should show that the Committee had not achieved a consensus, as defined by the Committee's protocols, but that all of the members

of the Committee, with the exception of the nuclear power industry coalition, had agreed to support the final draft of the rule as appended hereto as Attachment 3.

The facilitator indicated that the NRC will be preparing a final version of the preamble to the rule within the next week and that this version will be distributed to Committee members who will then be given one week to communicate, either over the telephone or by mail, any final suggestions for changes to the NRC. In addition, the facilitator indicated that a draft set of minutes for this meeting will be distributed along with the final draft of the preamble, but Committee members will be given more time to communicate any suggestions for changes before those draft minutes are made final. He also indicated that any Committee member who wishes to receive a set of final minutes for any or all Committee meetings should contact the Committee's Executive Secretary, Donnie Grimsley of the NRC, who will make these available. Otherwise final minutes will be available in the NRC public document room.

Representatives of the State of Nevada stated that they would like the minutes for this meeting to reflect their gratitude to the facilitation team for their efforts in these negotiations and for a job that was well done. The other Committee members indicated that they would like the minutes to reflect their support of this sentiment.

The senior facilitator, Howard Bellman thanked the other members of the facilitation team, Mathew Low and Timothy Mealey. Mr. Bellman noted that the quality of the outcome in

this negotiation, both in terms of the nature the agreements that were reached and the level of detail of those agreements, had far exceeded everyone's expectations. He stated that this outcome was really a reflection of the quality of representation that all of the various interests had brought to the process. He indicated that he particularly wished to thank the representatives of the NRC, including its spokesperson William Olmstead, but most especially, Francis Cameron, for all the hard work that they had put into this effort.

#### 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 local
Dennis Bechtel	NV local
Chip Cameron	NRC
Barbara Cerney	DOE
Jim Davenport	NV
Stan Echols	DOE
Melinda Kassen	EDF
Felix M. Killar, Jr.	USCEA (with EEI)
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
Brooks Yeager	Sierra Club

Executive Secretary

D. Grimsley	NRC
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Facilitators

Howard Bellman  
Matt Low  
Tim Mealey

Member of the Public/Other Agency Officials

Phil Altomare	NRC
Kirk Balcom	Nevada
Avi Bender	NRC
Peter Cummings	Las Vegas, NV
John H. Frye	NRC
John Hoyle	NRC
Christine Kohl	NRC
W. Richard Pierce	SAIC
Ian D. Zabarte	Western Shoshone National Council

Attachment 2

LICENSING SUPPORT SYSTEM  
NRC NEGOTIATING RULEMAKING CLOSING REMARKS  
BY  
S.P. KRAFT ON BEHALF OF  
EEI/UNWGM/USCEA COALITION  
JULY 20-21, 1988  
RENO, NEVADA

I appreciate the opportunity to offer these closing remarks in the final session of our Negotiating Committee. As I have stated before, while we represent a coalition of several industry groups, I also believe that we are representing the electricity consumers who are paying for the entire nuclear waste disposal program. We are always striving for the fair, efficient and cost/effective implementation of the Nuclear Waste Policy Act.

We believe that the negotiating rulemaking process is an excellent way for parties to come to grips with difficult, highly technical issues in a rulemaking setting. Those of us representing the industry coalition on this group have enjoyed working with, and have a great respect for, our fellow committee members. We urge the NRC to continue to use the negotiated rulemaking process for future rulemakings. It is apparent to us that all parties at the table have negotiated in good faith. The NRC staff deserves particular recognition for their tireless efforts in drafting and redrafting the rule based on the committee's efforts.

The industry has always believed that there is a great need for information sharing among the parties concerning the development of the repository at Yucca Mountain. All parties have an enormous task before them as the nation moves down the path prescribed by the Nuclear Waste Policy Act. Furthermore, given the unique requirements of the repository licensing process due to the tremendous number of documents and the volume of data relating to the repository, it is also apparent that all parties need to have some sort of document management and retrieval system, and that some type of licensing documentation system is necessary.

The purpose of the this rulemaking is to make changes to the NRC rules of practice, as they would apply to licensing the repository, to incorporate an electronic document management system - the Licensing Support System - in such a manner as to meet the three to four years licensing requirement in the NWPA. Since the last meeting we have done a number of things that I would like to share with you. First, we studied the latest draft of the rule and compared it with what we believed should be necessary to meet the three to four year requirement. Second, we studied DOE's draft cost/benefit analysis. (We are grateful to the DOE negotiating team for arranging our early access to the Study). Third, we brought together representatives of all segments of our industry for long and intense deliberations to be certain that the decision that we made regarding the draft rule is broadly based in the industry. Our review indicated a

great concern about the ability of the LSS, as it is currently conceived and operating under the rule as it currently stands, to live up to its promise of meeting the three to four year licensing requirement. We base this on several facts: First, the LSS is a new system. While it uses subsystems that are known quantities in the automatic data processing field, it does so for a volume of documentation and a database size that has not been attempted before. We believe that this untried system will not lead to reduction of the time for licensing, but very likely, because of system failures and the inability of the system to live up to the requirements of the rule and, more importantly, the expectations of the potential parties, will lead to an extension of the licensing time. Therefore, the draft rule and the LSS raise too many questions about its ability to aid in meeting the three to four year requirement. Furthermore, when we reviewed the cost analysis we were not surprised, but very disturbed that we have been correct in our estimates as to what the system will cost. Based on the DOE cost analysis we believe that the system will be at least one half billion dollars before the licence is issued, if not more. We see an open ended financial commitment by the electricity consumer.

For us to believe that the LSS and the rule, taken together, represent a satisfactory cost/benefit, we have to consider whether the cost of the LSS is justified by the benefits to the licensing process. I am sorry to say that we do not believe that the LSS as conceived and draft rule as it currently stands

provides a sufficient benefit. Therefore, we must, on behalf of the industry and our consumers, withhold our consensus.

We have an alternative suggestion. We believe that a simpler, more conventional system can be developed that would provide all of the needs that the LSS seeks to fill without the complications of a new, untried and very costly system. This would entail the use of a microfiche document system with electronic indexing available to all potential parties and guaranteed overnight delivery of copies. Because this conventional system could be available well before the docketing of the License Application, it would warrant changes to the rules of practice to achieve the efficiencies needed to meet the three to four year licensing requirement. In the alternative, we could accept the LSS as currently conceived, but, only with further changes to the rules of practice to guarantee meeting the three to four year licensing requirement.

At this juncture, we understand that the NRC staff will proceed to prepare a draft rule for notice and comment, which may or may not be the current draft. We urge the staff to take into consideration our comments throughout the course of this negotiating process aimed at achieving the three to four year licensing process. We look forward to continuing to work with all interested parties to fashion a rule that meets that objective.

Thank you for the time to make this statement. I would be pleased to answer any of your questions.

ATTACHMENT 3 .

(This attachment has not been included with these draft minutes since committee members had received a copy of the "final draft" at the meeting. The final minutes which will be filed in the NRC public documents room will include a copy of the "final draft" that was distributed at the meeting.)

August 8, 1988

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

RULE ON THE SUBMISSION AND MANAGEMENT OF RECORDS AND DOCUMENTS RELATED TO THE LICENSING OF A GEOLOGIC REPOSITORY FOR THE DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission is proposing revisions to the Commission's Rules of Practice in 10 CFR Part 2 for the adjudicatory proceeding on the application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to 10 CFR Part 60. The proposed revisions would establish the basic procedures for the licensing proceeding, including procedures for the use of the Licensing Support System, an electronic information management system, in the proceeding. The proposed revisions are based on the deliberations of the Commission's High-Level Waste Licensing Support System Advisory Committee. ~~/and reflect a consensus of that committee/~~ The Advisory Committee was composed of organizations representing the major interests likely to be affected by the rulemaking, and was established by the Commission pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 1, in September 1987.

DATES: The comment period expires [INSERT DATE THIRTY DAYS AFTER PUBLICATION]. Comments received after this date will be considered if it is practical to do so, but assurance of consideration is given only for comments filed on or before that date.

ADDRESSES: Submit written comments to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington DC, 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Francis X. Cameron, Office of the General Counsel, U.S. Nuclear  
Regulatory Commission, Washington D.C. 20555, Telephone:  
301-492-1623.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1987, the Commission announced the formation of the High-level Waste Licensing Support System Advisory Committee ("negotiating committee") to develop recommendations for revising the Commission's Rules of Practice in 10 CFR Part 2 for the adjudicatory proceeding on the application for a license to receive and possess high-level radioactive waste ("HLW") at a geologic repository operations area ("HLW licensing proceeding"). The negotiating committee sought consensus on the procedures that would govern the HLW licensing proceeding, including the use of the Licensing Support System ("LSS"), an electronic information management system, in the HLW licensing proceeding. The objective of the negotiated rulemaking is to provide for the effective review of the U.S. Department of Energy (DOE) license application within the three year time period required by Section 114(d) of the Nuclear Waste Policy Act of 1982, as amended.

The LSS would contain the information supporting the DOE license application, as well as the potentially relevant documents generated by NRC and other parties to the licensing proceeding, in a standardized electronic format. All parties would then have access to this system. Because the relevant information would be readily available through access to the LSS, the initial time-consuming ~~literature~~ discovery process ~~involved~~ including the physical production and on-site review of documents by parties to the HLW licensing proceeding will be substantially reduced. The use of the LSS in the HLW licensing proceeding will provide for timely review of the DOE license application through--

- providing comprehensive and early access to potentially relevant licensing information;
- providing full text search capability of much of the potentially relevant licensing information; and
- providing for the electronic submission of much of the formal papers during the licensing proceeding.

The LSS is designed to provide the entry of, and access to, potentially relevant licensing information as early as practicable before DOE submits the license application for the repository to the Commission. Early availability will facilitate preparation for the adjudicatory hearing, and

also may assist in the early identification and resolution of licensing issues.

The Commission used the process of negotiated rulemaking to develop the proposed rule. In negotiated rulemaking, the representatives of parties who may be affected by a proposed rule, including the Commission, convene as a group over a period of time to attempt to reach consensus on the proposed rule. Where consensus is reached, it forms the basis for the Commission's proposed rule which is then issued for notice and comment. In establishing the negotiating committee, the Commission agreed to issue for comment any proposed rule resulting from a consensus of the negotiating committee unless the Commission found that the proposed rule was inconsistent with its statutory authority or was not appropriately justified. ~~The negotiating committee did reach a consensus on the text of a proposed rule and the Commission is now issuing that proposed rule for public comment. Adoption of any final rule will be based on consideration of any comments received on the proposed rule. Although the consensus of the negotiating committee on the proposed rule is not the basis for the final rule, the Commission, however, may ultimately find it useful to rely on, or to refer to, the consensus in connection with its adoption of the final rule.~~

In the December 18, 1986, Federal Register Notice announcing the Commission's intent to conduct a negotiated rulemaking (51 FR 45338), the Commission identified several interests that might be affected by this particular rulemaking. These interests included Indian Tribes, State governments, local governments, and public interest groups affected by repository siting, utilities, ratepayers, and Federal agencies such as the NRC and DOE. The Commission stated that it would consider parties for membership on the negotiating committee on the basis of (1) whether they have a direct, immediate, and substantial stake in the rulemaking, (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. Based on this criteria, the Commission invited a number of groups to participate in the negotiated rulemaking. The first meeting of the negotiating committee was held in September 1987. The negotiating committee completed its deliberations in July 1988.

On February 5, 1988 (53 FR 3404), the Commission revised the membership of the negotiating committee to reflect the changes in the HLW siting process due to the enactment of the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. No. 100-203). The primary effect of the Act was to focus the Department of Energy site characterization efforts on a single site in Nevada to determine its suitability as a site for a geologic repository. Efforts in regard to other first round sites for a geologic repository, and the search for a second round geologic repository were terminated. With this change in the statutory framework, the Commission revised the

membership of the negotiating committee to reflect the focus on characterizing the Nevada site.

The members of the revised negotiating committee are--

- \_ DOE
- \_ NRC
- \_ State of Nevada
- \_ a coalition of Nevada local governments
- \_ a coalition of industry groups (Edison Electric Institute/Utility Nuclear Waste Management Group/U.S. Council for Energy Awareness)
- \_ National Congress of American Indians
- \_ a coalition of national environmental groups (Environmental Defense Fund/Sierra Club/Friends of the Earth)

The Commission emphasizes that the groups invited to participate as members of the negotiating committee are those who might be broadly affected by the LSS rulemaking. These groups do not necessarily correspond to the groups or persons who might have standing to participate as a party to the Commission's HLW licensing proceeding.

In accordance with the Commission's regulations in 10 CFR Part 7, the Commission chartered the negotiating committee as an advisory committee pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. App.1. Under these regulations, advance notice of negotiating committee meetings was provided in the Federal Register, the meetings of the full negotiating committee were open to the public, members of the public were offered the opportunity to submit written statements or make oral comments to the committee, and detailed minutes of each meeting were made available for public review and copying.

The Commission retained the Conservation Foundation, a nonprofit organization with expertise in the area of mediation and negotiated rulemaking, to assist the Commission in facilitating the meetings of the negotiating committee. Dr. Howard S. Bellman of the Conservation Foundation served as the senior facilitator for the negotiated rulemaking, assisted by Timothy J. Mealey, also of the Conservation Foundation, and Matthew A. Low of TLI Systems. The facilitators chaired the negotiating sessions, assisted individual parties in forming and presenting their positions, and offered

suggestions and alternatives to help the negotiating committee reach consensus.

The negotiating committee established detailed procedures for conducting committee meetings, including a protocol specifying that the committee would operate by consensus. "Consensus" was defined as no dissenting vote being cast by any committee member on a decision before the committee for approval. All members of the negotiating committee, with the exception of the industry coalition, agreed to the draft negotiating text of the proposed rule that was discussed by the negotiating committee at its final meeting ("final negotiating text"). Under the committee protocols, the dissenting vote by the industry would preclude consensus on the proposed rule.

The industry coalition's concerns focused on the ability of the ISS, as it was conceived in the final negotiating text, to meet the NWPAs timeframe for a Commission decision on the construction authorization for the repository. The coalition believes the ISS is an "untried system" for a "volume of documentation and a database size that has not been attempted before," and therefore, that the ISS would not lead to the reduction of the time for licensing, but would instead "lead to an extension of the licensing time." Consequently, coalition representatives argue that the cost of the ISS is unjustified. At the final negotiating session the coalition stated that DOE's estimate of the cost for the ISS of \$200 million (see U.S. DOE, Licensing Support System Benefit-Cost Analysis, July 1988) would, in actuality, be "at least one half billion dollars." This figure was derived by inflating the 1988 dollars over the period of time covered by the DOE analysis. In response, DOE noted that all the other cost estimates in the analysis, including the cost savings from the elimination of licensing delay in Appendix A, would have to likewise be inflated. Therefore, the conclusions would be the same whether in constant or adjusted dollars.

It should be noted that the DOE estimate of \$200 million for the ISS includes costs that would be incurred by DOE and NRC as part of its normal records management process for repository licensing apart from the ISS. Furthermore, even if \$200 million cost is attributed solely to litigation support, it is outweighed by the benefits of the proposed rulemaking. The DOE cost-benefit analysis indicates that approximately \$200 million would be saved for each year of licensing delay that is eliminated due to the ISS. The final negotiating text, if implemented, sets in place a procedure for hearings which will allow the Commission to reach a decision on the construction authorization within the timeframe specified in section 114(d) of the NWPAs. However, even in the process took up to one-third longer than the proposed rule envisions, the ISS would still result in eliminating substantial time from current licensing practice. The DOE cost-benefit data demonstrates that the benefits of the draft proposed rule would exceed the costs of implementing the ISS.

The Commission is issuing the final negotiating text as a proposed rule for public comment. The final negotiating text received the endorsement of all

participants on the negotiating committee with the exception of the industry coalition. Those participants who approved the final negotiating text are DOE, the State of Nevada, the coalition of Nevada local governments, the National Congress of American Indians, the coalition of national environmental groups, and the NRC staff. The proposed rule is carefully drafted with the full participation of people with strong experience and background in NRC practice. It reflects the concerns of the major interests affected by the rulemaking. In fact, the industry coalition, although dissenting on the final negotiating text, fully participated in the drafting of the final negotiating text, and was complimentary concerning the effectiveness of the negotiating process.

The proposed rule is being issued for a thirty day comment period. The participants on the negotiating committee who approved the final negotiating text have agreed to refrain from commenting negatively on the final negotiating text. The industry coalition, as well as any nonparticipants in the negotiation, are free to comment critically on any aspect of the proposed rule, including cost aspects of the ISS. Consistent with the negotiating committee's function to advise the Commission on the ISS rulemaking, the staff intends to submit the comments on the proposed rule to the negotiating committee for review and comment, at which time participants who approved the final negotiating text would be afforded a full opportunity to comment and respond to any criticism or potential revision of the text. They would also be free to reassess their positions on the ISS in light of any change in the NRC position with regard to the rulemaking due to comments on the proposed rule

The negotiating committee established detailed procedures for conducting committee meetings, including a protocol for consensus of the committee according to the protocols. The committee operated by consensus, meaning that committee decisions can be considered to be based on consensus only if there is no dissent by any member.

DOE has assumed the responsibility for designing the ISS consistent with the requirements of the proposed rule, and the ISS is now in the preliminary design stage. DOE has issued a series of reports that are intended to provide the basis for determining the ISS design specifications. See U.S. Department of Energy, "Licensing Support System Preliminary Needs Analysis" (February 1988); "Licensing Support System Preliminary Data Scope Analysis" (March 1988); "Licensing Support System Conceptual Design Analysis" (May 1988); "Licensing Support System Benefit-Cost Analysis" (July 1988). When access to the ISS becomes available (currently projected for January, 1991), the NRC, as ISS Administrator, will be responsible for management and operation of the ISS.

The participants on the negotiating committee are currently providing information to DOE on the design of the ISS, and ~~through the negotiating committee's technical working group. This working group~~ will continue to provide comments to DOE on the ISS design until the ~~ISS Advisory Review Panel~~ ISS Advisory Committee has been appointed by the ~~ISS Administrator~~

Commission pursuant to proposed section 2.1011(e)(2). The ~~Advisory/Review Panel~~ LSS Advisory Committee will be ~~appointed from members of the Working Group~~ composed of the State of Nevada, the coalition of affected units of local government in Nevada on the negotiating committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups on the negotiating committee, and such other members as the Commission may from time to time determine. The LSS Advisory Committee will serve as an interim advisory group until the LSS Advisory Review Panel is established by the ISS Administrator.

In addition, the ISS Administrator will consult with DOE on the design and development of the ISS. It is anticipated that the NRC and DOE will enter into a Memorandum of Understanding that will set forth the detailed responsibilities of each agency in regard to the ISS, and will provide for a coordination of these responsibilities.

The proposed rule would apply to the HLW licensing proceeding, and would be used in connection with any hearings in that proceeding. In this regard, it may be useful to summarize the Commission's HLW licensing process. After the DOE license application to receive and possess waste at a geologic repository is docketed, the Commission's regulations in 10 CFR part 60 provide for the Commission to review DOE's plans with respect to a geologic repository before the commencement of construction. Accordingly, DOE may not commence construction of a geologic repository unless it has first filed a license application and obtained the Commission's construction authorization. 10 CFR 60.3(b). A construction authorization is not itself a license, since it does not authorize possession or use of nuclear materials, but DOE's failure to apply for and obtain a construction authorization constitutes grounds for denial of the license that DOE would later need in order to receive high-level waste at the repository. Moreover, the Commission may, if necessary, issue orders to secure compliance with construction authorization conditions and to protect the integrity of the repository. Under 10 CFR 2.101(f)(8), a hearing is required on the issuance of a construction authorization. In order for the Commission to issue a construction authorization, the Commission must determine that the requirements of 10 CFR 60.31 have been met, including that the site and design comply with the performance objectives and criteria in Subpart E of 10 CFR Part 60.

The Commission's action on the construction authorization is part of the Commission's review of the application for a license to receive and possess waste at the repository. If the Commission does authorize construction, the Commission must later review, and approve or disapprove, the license application amendment to emplace waste at the repository. Under 10 CFR 2.105(a)(9), the Commission may authorize a hearing on the issue of emplacement of waste at the repository. In order for the Commission to issue the license to receive and possess waste at the repository, the Commission must determine that the requirements of 10 CFR 60.41 have been met, including that construction of the repository has been substantially

completed in conformity with the license application, the provisions of the Atomic Energy Act, and the rules and regulations of the Commission.

The NWPA differentiates between an application for a construction authorization and an application for a license, whereas 10 CFR Part 60 has referred and continues to refer solely to a license to receive and possess waste (to be filed prior to construction). The Commission considers this differentiation to lack any substantive significance. In the view of the Commission, the information it needs in order to be able to consider the issuance of a construction authorization is generally the same as will be needed prior to the issuance of a license to receive and possess HLW. For this reason, the Commission regulations call for the application to be as complete as possible in light of the information that is reasonably available at the time of filing the application prior to commencement of construction. 10 CFR 60.24(a).

#### The Proposed Rule

##### 2.1000 Scope of subpart.

The proposed rule establishes a new Subpart J in 10 CFR Part 2 setting forth the procedures that govern the Commission's HLW licensing proceeding, including the use of the ISS for the submission and management of documents in the proceeding. Generally, the procedures in the new Subpart take precedence over the provisions of general applicability in 10 CFR Subpart G. However, Section 2.1000 cross-references any sections of general applicability in Subpart G that will continue to apply to the HLW licensing proceeding. The proposed rule only applies to the HLW proceeding, and does not apply to licensing proceedings for any other type of facility or activity licensed by the Commission. The rule will be generally applicable to all parties to the HLW licensing proceeding regardless of whether a particular party was a member of the negotiating committee.

##### 2.1001 Definitions.

Section 2.1001 sets forth the definitions of terms used throughout Subpart J. These definitions will be discussed with the relevant sections of the proposed rule.

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

Proposed section 2.1002 describes the purpose and scope of the ISS. The ISS is intended to provide full text search capability of, or easy access to, the "documentary material" of DOE, NRC, other parties to the HLW licensing proceeding, government entities participating in the HLW proceeding as "interested governmental participants" under 10 CFR 2.715(c), persons who qualify as "potential parties" under proposed section 2.1008, and the contractors of these parties, interested governmental participants, and potential parties ("parties," "interested governmental participants," and

"potential parties, will be collectively referred to hereinafter as "ISS participants"). ~~It is anticipated that the~~ ISS participants ~~will~~ must ensure that their contractors, consultants, grantees, or other agents, comply with the applicable requirements of Subpart J.

For the purposes of the information that will be in the ISS, "documentary material" means "any material or other information generated or in the possession of an ISS participant, 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," including the development and review of the Environmental Impact Statement for the repository. The identification of material that is within the universe of "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~~ will be determined by the topical guidelines set forth later in this Supplementary Information. It is the Commission's intent to also issue these topical guidelines as a NRC Regulatory Guide. The Commission expects all ISS participants to make a good faith effort to identify the documentary material within the scope of proposed section 2.1003. However, a rule of reason must be applied to an ISS participant's obligation to identify all documentary material within the scope of the topical guidelines. For example, DOE will not be expected to make an exhaustive search of all its archival material that conceivably might be within the topical guidelines but has not been reviewed or consulted in any way in connection with DOE's work on its license application. It is also anticipated that the ISS Advisory Review Panel established pursuant to proposed section 2.1011(e), in evaluating the implementation of the ISS, may make occasional recommendations to the Commission on whether particular categories of documentary material (e.g. those limited by date or subject) should still be included within the topical guidelines.

Although the topical guidelines will guide the selection of relevant information for entry into the ISS in full text, they will not be used for the purposes of determining the scope of contentions that can be offered in the HLW proceeding under proposed section 2.1014. The scope of contentions will be governed by the Commission's authority under relevant statutes and regulations.

Proposed section 2.1002(d) specifies that Subpart J is not intended to affect any independent right of a potential party, interested governmental participant, or party to receive information or documents. These independent rights consist of statutory rights under such statutes as the Freedom of Information Act (FOIA), or the Nuclear Waste Policy Act, as amended, or rights derived from grant requirements such as those between DOE and the State of Nevada.

2.1003 Submission of material to the ISS.

Proposed section 2.1003 sets forth the requirements for the submission of documentary material by ISS participants to the ISS Administrator for entry into the ISS. ISS participants, excluding DOE and NRC, must submit an ASCII file, a bibliographic header, and an image, for all documents generated by the ISS participant or its contractor after the ISS participant gains access to the ISS pursuant to either proposed section 2.1008 or proposed section 2.1014. Submission of these documents must be made reasonably contemporaneous with their creation. For documents generated or acquired before the ISS participant gains access to the ISS, the ISS participant need only submit a header and an image for each document. The ISS Administrator will be responsible for entering these documents into the ISS in searchable full text. DOE and NRC, the generators of the largest volumes of documentary material, will be responsible for submitting to the ISS Administrator ASCII files, bibliographic headers and images of documents within the scope of the topical guidelines. The format criteria for the submission and acceptance of ASCII, images, and headers will be initially established by DOE in concert with ~~the Technical Working Group of the Regulatory Committee~~ the ISS Advisory Committee established pursuant to proposed section 2.1011(e)(2), to be later supplemented as necessary by the ISS Administrator in concert with the ISS Advisory Review Panel.

The submission requirements of proposed section 2.1003 generally apply only to final documents, e.g., a document bearing the signature of an employee of an ISS participant or its contractors. However, paragraphs (a) and (c) of proposed section 2.1003 also require the submission of "circulated drafts" for entry into the ISS. A "circulated draft" means a nonfinal document circulated for supervisory concurrence or signature and in which the original author or others in the concurrence process have non-concurred. The intent of this exception to the general rule on final documents is to capture those documents on which there has been an unresolved objection of the author or another person in the internal management review process (the concurrence process) of an ISS participant or its contractor. In effect, the Commission and the other government agencies who are ISS participants are waiving their deliberative process privilege for these circulated drafts. The objection or non-concurrence must be unresolved ~~and unresolved in writing~~. Any draft documents on which such a formal, unresolved objection exists must be submitted for entry into the ISS. Although many of the ISS participants or their contractors do not have the same type of concurrence process as DOE and NRC, the Commission expects all ISS participants to make a good faith effort to apply the intent of this provision to their document approval process.

This requirement applies regardless of whether any final document ultimately emerges from the ISS participant's decision-making process. A determination not to issue a final document, or allowing a substantial period of time to elapse with no action being taken to issue a final document, shall be deemed to be the completion of the decision-making process. If a decision is made to not finalize a document on which there has been an ~~written~~ objection, the draft of that document must still be entered into the ISS, but only after

the decision-making process on the document has been completed. The requirements of proposed section 2.1003 do not require a ISS participant to submit a circulated draft to the ISS while the internal decision-making process is still ongoing. In addition, under proposed section 2.1006(d), circulated drafts that are subject to withholding under a privilege or exception other than the deliberative process privilege (e.g., attorney work product), are not required to be submitted for entry in searchable full text to the ISS under proposed section 2.1003.

As a general rule, all documentary material is to be in the ISS in searchable full text. However, the proposed rule provides for exceptions to this general rule. Proposed section 2.1003(c) addresses graphic-oriented documentary material that is not appropriate for entry into the ISS in searchable full text. Graphic-oriented documentary material is material that is printed, scripted, handwritten, or otherwise displayed in hard copy form, and is capable of being captured in electronic image by a digital scanning device. This includes raw data, computer runs, computer programs and codes, field notes, maps, and photographs, ~~and other documents.~~ ~~Generally, this material is that which is either not in a textual form or for which there would be little value in providing full text search capability.~~ For material of this type, ISS participants must submit a bibliographic header and image for each discrete segment of information. ~~The bibliographic header, among other fields, must specify the location of the material.~~ Although this type of material will not be in the ISS in searchable full text, access to the material must be made available to the ISS participants by the generator of the material. ~~Images of maps, photographs, field notes, and other graphic material that may be appropriate for entry into the ISS must be submitted to the ISS administrator by the generator of that material.~~ The timeframe for entry of such material will be established pursuant to the access protocols in proposed section 2.1011(d)(10). However, in any case this type of documentary material must be entered into the ISS after the principal investigator decides that the data is in a usable form, including the completion of quality assurance procedures. The access protocol should ensure that any collection or "package" of documentary material, as the term is used in proposed section 2.1003(c)(3), which relates to a study, should be submitted reasonably contemporaneous with the completion of such a "package," including any quality assurance that may be required.

Proposed section 2.1005 sets forth categories of documents that are to be completely excluded from the ISS, and proposed section 2.1006 sets forth the categories of documents that may be withheld from entry into the ISS on the basis of a privilege or exception. The details of these provisions will be discussed below.

To ensure that progress is made in designing, developing and loading the ISS, proposed section 2.1003(h) provides for evaluations of DOE compliance with the requirements of proposed section 2.1003 at six month intervals. The DOE license application cannot be docketed under Subpart J, thus losing

the efficiency benefits of those provisions, unless the ISS Administrator certifies at least six months before the license application is submitted that DOE is in substantial compliance with the provisions of the Subpart. Although proposed section 2.1003(h)(1) requires the certification decision six months before licensing, the Commission anticipates that the ISS participants will have access to the ISS well before the license application is submitted. The ISS Administrator's decision on DOE compliance may be reviewed by the Pre-License Application Licensing Board established pursuant to proposed section 2.1010, if the Board receives a properly filed petition. Under proposed sections 2.1003(a)(2) and (b)(2), ISS participants are required to submit any documentary material generated or acquired before the ISS participant is given access to the ISS ("backlog"), no later than six months before the license application for the repository is submitted. However, the Commission encourages ISS participants to submit this material for entry as soon as possible after they have been given access to the ISS, and at least two years before the license application is submitted.

In the event that the ISS Administrator cannot certify DOE compliance with Subpart J, DOE may either postpone the filing of the application until compliance is certified, or can file the license application for docketing under 10 CFR Part 2, Subpart G. In the latter event, the Commission will note that it will be unlikely to meet the three year NWPA timeframe for a decision on the issuance of a construction authorization, in the event of a contested adjudicatory proceeding. Although DOE may ultimately come into compliance with the provisions of Subpart J at some point after the license application has been docketed under Subpart G, the Commission may still not be able to certify that the statutory timeframe will be met. However, proposed section 2.1003(h)(3)(ii) does authorize the Commission to specify the extent to which Subpart J will apply if DOE later comes into compliance. The Commission is optimistic that the effective implementation of the rule proposed in this Notice, which is based on a consensus of the negotiating committee, will allow the Commission to meet the schedule set forth in Section 114(d) of the NWPA.

#### 2.1004 Amendments and additions.

This section provides for the addition and amendments of records submitted by the ISS participants. The submitter has sixty days to verify whether a document has been entered correctly in the pre-license application phase, and five days to verify correct entry after the license application has been submitted. Any errors in entry discovered during the sixty and five day periods may be corrected by the submitter. After the time period for verification has run, any alleged errors may not be corrected by revising the original document. Rather the submitter must submit a corrected version to the ISS Administrator, with a separate bibliographic header. Both the bibliographic header for the revised document and the original document must note that two versions of the document are in the ISS.

Proposed section 2.1004 also addresses the issue of updates of documents that are already in the ISS. Updated pages shall be submitted to the ISS Administrator for entry as a separate document, with a separate bibliographic header. The bibliographic header of the original document must specify that an update is available. All the pages in a particular update will be entered as a single document.

Proposed section 2.1004(e) requires that any document that has been incorrectly excluded from the ISS must be submitted to the ISS Administrator for entry within two days of its identification by the ISS participant who is responsible for the submission of the document.

#### 2.1005 Exclusions.

Proposed section 2.1005 establishes several categories of documents that do not have to be entered into the ISS, either under the requirements of proposed section 2.1003 or under the derivative discovery requirements of proposed section 2.1019. These exclusions include documents typically referred to as official notice material; reference books and text books; administrative materials such as general distribution cover memoranda, budget, finance, personnel, and procurement materials; press clippings and press releases; and junk mail. 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 is not within the scope of these exclusions.

#### 2.1006 Privilege.

The submission of documents to the ISS is subject to the traditional privileges from discovery recognized in NRC adjudicatory proceedings, as well as all the exceptions from disclosure contained in 10 CFR 2.790 of the Commission's regulations. These privileges and exceptions include the attorney-client privilege, the attorney work product privilege, the government's deliberative process exemption, protection for privileged or confidential commercial or financial information, and the protection of safeguards information. The Pre-License Application Licensing Board, pursuant to section 2.1010(b), will rule on any claims of withholding based on these privileges or exceptions. As in any NRC adjudicatory proceeding, the Board may rule that the release of privileged or excepted material is necessary to a proper decision in the proceeding, or may rule on the disclosure of a document under a protective order. Proposed section 2.1006(a) extends the deliberative process privilege normally available to federal government agencies to state and local governments and Indian Tribes. Safeguards information is to be protected under the provisions of 10 CFR 73.21. Subpart I of 10 CFR 2 will govern the protection and disclosure of any Restricted Data and National Security Information during the proceeding. The existence of any material of this type should be identified to the Licensing Board and the parties pursuant to 10 CFR 2.907

and is not subject to the requirements of proposed section 2.1003. Accordingly, no headers need be submitted for Subpart I information.

2.1007 Access.

Proposed section 2.1007 establishes the provisions for access to the ISS by the public and by ISS participants. In terms of public access, the NRC and DOE will provide public access terminals at their respective public document rooms at headquarters in Washington D.C., and at various locations in the vicinity of the likely candidate site for the repository. In the pre-license application phase, public access to the ISS through these public access terminals will consist of full text search capability of the full headers for documents in the ISS. Although the public document rooms will provide access, consistent with current practice, to the paper copy or microfiche of the documents of each agency before access to the ISS is available (currently projected for January 1991), access to the ISS headers will not be available until the ISS becomes operational. However, once the ISS is operational, public access to the ISS headers will be available within the same timeframe that the headers and ISS documents are available to ISS participants. Copies of specific DOE or NRC documents will be available on request under the FOIA regulations of the NRC, 10 CFR Part 9, or DOE, 10 CFR Part 1004. These regulations provide for a ten day response time to requests, 10 CFR 9.25(e), and the waiver of copying fees to qualified persons, 10 CFR 9.39. Public access to the full text of documents in the ISS, except for documents withheld from disclosure under proposed section 2.1006, shall be provided after the notice of hearing is issued for the HLW licensing proceeding. ~~Access during this period may be from the access terminals in the public document rooms. Remote access for the public from individual computer facilities will not be available.~~ DOE and NRC will ensure that adequate terminal access facilities are provided at the public document rooms.

Remote access to the ISS from individual computer facilities will be available to ISS participants both during the pre-license application phase and after the notice of hearing has been issued. The cost of the computer facility and the telephone connect charge must be borne by the ISS participant. However, they will not be assessed a CPU charge for access to the ISS. ISS participants will be able to file an electronic request for paper copies of ISS documents from their individual computer facilities, and also will be able to file an electronic request for a fee waiver when requesting paper copies of documents in the ISS. This waiver is currently available to qualified persons or groups seeking a fee waiver for copies of NRC documents who submit a written request to the Commission under the Commission's Freedom of Information Act (FOIA) regulations in 10 CFR Part 9. The criteria in 10 CFR 9.39 would be used to determine if the requestor should be granted a fee waiver. Proposed section 2.1007(c)(4) would authorize the Commission to grant a generic fee waiver to a qualifying ~~group~~ ISS participant after the initial request for a fee waiver has been made.

Documents in the ISS shall not be considered NRC agency records solely by virtue of the NRC being the ISS Administrator. However, any of those documents that were generated or submitted to the NRC as part of the NRC's licensing responsibility for the repository will be NRC agency records. As noted above, these documents will be available under a FOIA request to the NRC. Similarly, DOE records will be available from DOE under a FOIA request, and the records of any other governmental entity that is obligated to provide documents by virtue of a freedom of information statute will also be available. It is anticipated that the public availability of headers for ISS documents will facilitate freedom of information requests and responses.

#### 2.1008 Potential parties.

Proposed section 2.1008 establishes the procedures for a person becoming a potential party during the pre-license application phase, thereby gaining access to the ISS during this period. Upon a petition from an interested person, the Pre-License Application Board, established pursuant to proposed section 2.1010, will determine if the person meets the criteria in proposed section 2.1008(c)(1). These criteria consist of the factors for determining intervention status under proposed section 2.1014(c), or the criteria in 10 CFR 2.715 for interested governmental participation, both as evaluated in reference to the topical guidelines set forth below.

A grant of access to the ISS pursuant to proposed section 2.1008 before an application is filed does not carry a presumption that a potential party will be admitted as a party after an application is filed under section 2.1014 or as an interested governmental participant under 10 CFR 2.715. However, the Licensing Board will consider this as one factor in ruling on petitions for intervention under proposed section 2.1014(c). An ISS participant's access to the ISS obligates it to comply with the regulations in Subpart J, including compliance with all orders of the Pre-License Application Licensing Board.

#### 2.1009 Procedures.

Proposed section 2.1009 specifies the procedures each ISS participant must follow to ensure implementation of the requirements in Subpart J, including establishing procedures to ensure that documentary material is identified and submitted for entry into the ISS. Each ISS participant must identify a specific individual as the ISS point-of-contact. This individual must certify, at six month intervals, that all documentary material for which the ISS participant is responsible under this subpart has been identified and submitted to the ISS.

#### 2.1010 Pre-license Application Licensing Board.

Proposed section 2.1010 establishes an NRC Pre-License Application Licensing Board to rule on requests for access to the ISS during the pre-license application phase, and to resolve disputes over the entry of documents and

the development and implementation of the ISS by DOE and the ISS Administrator. The Board will be appointed six months before access to the ISS is ~~available / which is / to be~~ scheduled for ~~January / 1991~~. The Board possesses the same general powers as other NRC Licensing Boards possess under 10 CFR 2.718 or 10 CFR 2.721(d). In order to gain access to the ISS during the pre-license application phase, a group must agree to comply with all orders of the Pre-License Application Licensing Board, and all ISS regulations.

#### 2.1011 ISS management and administration.

Proposed Section 2.1011 establishes an ISS Administrator who is responsible for managing, operating, and maintaining the ISS. Because the ISS will contain copies of the documents comprising the Commission's docket and official record for the repository licensing proceeding, and because use of the ISS will be an integral part of the Commission's adjudicatory hearing on the license application, the NRC will serve as the ISS Administrator. The ISS Administrator is to be appointed sixty days after the effective date of the final ISS rule. In order to avoid any conflict-of-interest problems, the ISS Administrator cannot be any person or organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste licensing proceeding or a part of the management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards. On a related issue, with the exception of the Commission in its role as ISS Administrator (see the definition of "ISS Administrator in proposed section 2.1001), the ISS cannot reside in any computer system that is controlled by any ISS participant, including its contractors, and cannot be physically located on the premises of any ISS participant or its contractors.

The ISS is to be designed and developed by DOE consistent with the requirements in Subpart J. This responsibility includes all procurement of hardware and software. However, the design and development of the ISS by DOE must be undertaken in consultation with the ISS Administrator. After the ISS has been designed and becomes operational, all redesign and procurement by DOE must be with the concurrence of the ISS Administrator.

Proposed section 2.1011(e) provides for the establishment of a ISS Advisory Review Panel, which will be chartered under the Federal Advisory Committee Act, to advise DOE on the design and development of the ISS, and to advise the ISS Administrator on the implementation of the ISS. The ISS Administrator appoints the members of the Advisory Review Panel from members of the NW Licensing Support System Advisory Committee established pursuant to proposed section 2.1011(e)(2) within sixty days after the ISS Administrator has been designated. The Licensing Support System Advisory Committee will be comprised of the State of Nevada, the coalition of affected units of local government in Nevada on the negotiating committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups on the negotiating committee, and such other

members as the Commission may from time to time determine. Because DOE is now in the process of designing the ISS, the Advisory Review Panel is not yet available to provide advice and recommendations to DOE. In the interim period between publication of the proposed rule and appointment of the Advisory Panel by the ISS Administrator, the ~~Technical Working Group formed by the Negotiating Committee~~ ISS Advisory Committee will perform the functions of the Advisory Review Panel set forth in proposed section 2.1011(e).

It is anticipated that the DOE and NRC will enter into a Memorandum of Understanding (MOU), consistent with the requirements of the proposed rule, on the design and development of the ISS.

Proposed section 2.1011(d) sets forth the responsibilities of the ISS Administrator including providing the necessary personnel, materials, and services for the operation and maintenance of the ISS, and entering the documentary material submitted pursuant to proposed section 2.1003 in searchable full text.

#### 2.1012 Compliance.

Proposed section 2.1012 establishes provisions to ensure compliance with the requirements of Subpart J, particularly the document submission requirements of proposed section 2.1003. DOE may not submit the license application for docketing under Subpart J unless the ISS Administrator certifies that DOE is in substantial and timely compliance with proposed section 2.1003. In addition, under proposed section 2.1012(b)(1), no person may be granted party or interested governmental participant status in the hearing if it is not in substantial and timely compliance with the requirements of proposed section 2.1003. A person who is not in substantial and timely compliance at the time specified for the submission of petitions to intervene or to become an interested governmental participant, may later come into compliance and be admitted to the hearing, assuming they meet all the other requirements in proposed section 2.1014 or 10 CFR 2.715(c) for admission. However, any person admitted to the hearing under this provision must take the proceeding as they find it. The Licensing Board will not entertain any requests from such a person to delay the proceeding in order for that person to compensate for time missed in the hearing. Proposed section 2.1012(d) provides for the termination or suspension of an ISS participant's access rights if it is in noncompliance with any applicable order of the Pre-License Application Board or the Hearing Board. However, any loss of access under this section does not relieve an ISS participant of its service responsibilities under proposed section 2.1013 of this subpart.

#### 2.1013 Use of ISS during adjudicatory proceeding.

Proposed section 2.1013 establishes procedures for the electronic submission of pleadings during the hearing, or during the pre-license application phase for practice before the Pre-License Application Board under proposed section

2.1010, for the electronic transmission of Board and Commission issuances and orders, as well as for on-line access to the ISS during the hearing. Under proposed section 2.1013(a) the Secretary of the Commission maintains the official docket pursuant to the requirements of 10 CFR 2.702. In this regard, each potential party, party, or interested governmental participant must submit a paper copy of each electronic filing to the Secretary. The proposed rule gives the Secretary the flexibility to establish a hard copy docket or an electronic docket depending on the details of ISS design, and the records management requirements of the Federal Archives. Absent good cause, all exhibits tendered during the hearing must have already been entered into the ISS prior to the commencement of that portion of the hearing where the exhibit is to be offered.

#### 2.1014 Intervention.

Proposed section 2.1014 establishes the standards for intervention in the HLW proceeding. Proposed section 2.1014 incorporates several of the provisions currently in the 10 CFR 2.714 general standards for intervention. Accordingly, any provisions of proposed section 2.1014 that remain unchanged from the 10 CFR 2.714 provisions are to be interpreted according to the existing practice. Proposed section 2.1014(a) requires petitions for intervention and proposed contentions to be filed at the same time, within thirty days after the notice the hearing. In addition to the factors now in 10 CFR 2.714(a)(2), proposed section 2.1014(a)(2) requires the petition to reference with particularity the specific documentary material, or absence thereof, that provides the basis for the contention, and the specific regulatory or statutory requirement that needs to be satisfied. This codifies existing Commission practice in regard to contentions.

Proposed section 2.1014(a)(4) allows the adding or amending of contentions during the hearing, including contentions based on the NRC Staff Safety Evaluation Report (SER). Contentions added or amended before the issuance of the SER will be evaluated according to the factors for nontimely filings in proposed section 2.1014(a)(1). Contentions based on information or issues raised in the SER must be made within forty days after the issuance of the SER and will be evaluated according to the factors in 2.1014(a)(1). The SER is to be issued within eighteen months after the license application is docketed. ~~This provision only applies to the SER itself and not any other events to the SER.~~ Any petitions to amend or add contentions made more than forty days after the issuance of the SER, in addition to the factors for nontimely filing in proposed section 2.1014(a)(1), must include a showing that the contention involves a significant safety or environmental issue or raises a "material" issue related to the performance evaluation anticipated by 10 CFR 60.112 or 10 CFR 60.113. In this context, "material" may involve items that are material to demonstrating compliance with sections 60.112 or 113 but which in and of themselves may not constitute a significant safety or environmental issue.

Although, proposed section 2.1014(a)(4) places some restrictions on the amending or adding of contentions compared to 10 CFR 2.714, the Commission believes that the early availability of documents through access to the ISS will facilitate the preparation of contentions compared to the traditional NRC licensing proceeding where contentions must be prepared ~~on the basis of less than all information~~ without the benefit of prior discovery.

Proposed section 2.1014(c) establishes the standards for permitting intervention in the HLW proceeding. Intervention is permitted as a matter of right by an affected unit of local government as defined in section 2(31) of the NWPA or by any affected Indian Tribe as defined in 10 CFR Part 60 of the Commission's regulations. As noted earlier, the State of Nevada, like DOE or the NRC, is automatically a party to the HLW proceeding, assuming that a Nevada site is the subject of the DOE license application. All other petitions to intervene will be evaluated according to the factors in proposed section 2.1014(c)(1) through (4).

#### 2.1015 Appeals.

Proposed section 2.1015 sets forth the procedures for appealing decisions of the Pre-License Application Board or of the Hearing Board. Unlike the existing appeals process, appeals, including those on the denial of contentions, must be filed within ten days.

#### 2.1016 Motions

Proposed section 2.1016 establishes the procedures for motions practice in the HLW proceeding. The proposed rule eliminates the provision in 10 CFR 2.730(d) in regard to oral arguments on motions. However, this deletion is not intended to change existing practice, i.e., requests for oral argument on substantive motions are liberally granted. It is within the discretion of the Board to allow arguments on motions under 10 CFR 2.755.

#### 2.1017 Computation of time.

Proposed section 2.1017 specifies the computation of time for an act or an event for the HLW licensing proceeding. Because of the availability of the electronic transmission of pleadings through the ISS, one day instead of five days is allowed for the transmission of documents in response to the service of a notice or other document. This will save substantial time during the hearing. The use of electronic transmission is addressed in proposed section 2.1013. ~~The time for filing will be extended~~ If the ISS is unavailable for more than four access hours of any day that would normally be counted in the computation of the time for filing, that day will not be counted in the computation of time. However, this would not include periods of ISS unavailability due to a malfunction of the ISS participant's equipment or to the operation of that equipment.

#### 2.1018 Discovery.

Proposed section 2.1018 specifies the scope and timing of discovery in the HLW licensing proceeding. The ISS provides the document discovery in the HLW licensing proceeding, supplemented by the derivative discovery in proposed section 2.1019. Discovery is limited to access to the discoverable material in the ISS; entry upon land for inspection and access to raw data; oral depositions; the request for admissions; and informal requests for information. These informal requests would be for the type of information normally gathered through the use of written interrogatories. Therefore, the proposed rule does not generally provide for the use of written interrogatories or depositions upon written questions. However, if the informal discovery process does not satisfy a request for information, proposed 2.1018(a)(2) provides a mechanism for the use of written interrogatories or depositions upon written questions, by order of a discovery master appointed under proposed section 2.1018(g). If no discovery master has been appointed, the Hearing Licensing Board itself, may consider these petitions. Although informal discovery may begin in the pre-license application phase, an order compelling discovery through written interrogatories or through depositions on written questions can only be issued by the Discovery Master or the Hearing Licensing Board after the license application has been docketed.

The required showing of substantial need in regard to discovery for an ISS participant's "representatives" in proposed section 2.1018(b)(2) does not include "consultants" to a ISS participant, unless the consultant's responsibilities are to assist in preparation for litigation.

Proposed section 2.1018(c) empowers the Board to issue an order to protect a party from abuse of the discovery process. As noted earlier, the objective of the negotiated rulemaking is to provide for the effective review of the DOE license application within the three year time period specified in Section 114(d) of the NWPA. Consistent with this objective, proposed section 2.1018(c) includes criteria to prevent abuse of the discovery process from frustrating this objective. In ruling on motions to protect a party from a particular discovery request, the Board may consider any "undue delay" that would result from the discovery request. Under this criterion, the Board will review any motion for a protective order from a particular discovery request, including a request for a written deposition, to determine whether the request creates the potential for unreasonably interfering with meeting the three year schedule. When a party or an interested governmental participant reasonably believes that the Board has not ruled in accordance with this rule and its underlying policy, it may seek review pursuant to directed certification under section 2.718(i) of this part. The Commission itself may entertain such requests and will apply the criteria for granting directed certification liberally. The Hearing Licensing Board or Discovery Master may also consider undue delay in ruling on a petition for the use of written interrogatories or depositions on written questions under proposed section 2.1018(a)(2).

In addition, proposed sections 2.1021 and 2.1022, on the first and second pre-hearing conferences respectively, provide for the establishment of discovery schedule for the hearing by the Board. In establishing these discovery schedules, the Board must consider the objective of meeting the three year schedule specified in the NWPA, as well as the early availability of information made possible by the Licensing Support System. Furthermore, the Board should exercise all due diligence to ensure that discovery is completed within two years of the notice of hearing. However, this would not prevent the Board from establishing a schedule that provided for less than a continuous two year period of discovery, or determining whether any discovery is necessary after the second pre-hearing conference.

Proposed section 2.1018(f) anticipates the application of the traditional sanctions by the Licensing Board for failure to respond to a discovery request, including the issuance of an order for a response or answer to a discovery request.

#### 2.1019 Depositions.

Proposed section 2.1019 provides for discovery through the taking of depositions. Proposed section 2.1019 basically follows the content of the general deposition rule in 10 CFR 2.740a. However, proposed section 2.1019(i) provides for the derivative discovery of documents during the deposition. This provision establishes requirements for the disclosure, and entry into the ISS, of material in a deponent's possession that would not be required to be initially entered into the ISS under proposed section 2.1003. This includes personal records, travel vouchers, speeches, preliminary drafts, and marginalia. "Preliminary drafts" means any nonfinal document that is not a circulated draft, i.e., on which no formal, unresolved objection or nonconcurrence has been made. "Marginalia" means handwritten, printed, or other types of notations added to a document excluding underlining and highlighting.

#### 2.1020 Entry upon land for inspection.

Proposed section 2.1020 establishes the procedures for parties to gain access to the land or property in the possession or control of another party or its contractor for the purpose of inspection and access to raw data. However, this provision should not be construed as expanding any of the rights contained in Section 116 or Section 118 of the NWPA, or any other applicable statutory or regulatory restrictions, related to site investigation.

#### 2.1021 First prehearing conference.

Proposed section 2.1021 establishes a first pre-hearing conference in the HLW proceeding. The first pre-hearing conference will identify the key issues in the proceeding, and consider petitions for intervention.

2.1022 Second prehearing conference.

Proposed section 2.1022 establishes a second pre-hearing conference in the HLW licensing proceeding. The second pre-hearing conference is to be held not later than seventy days after the NRC staff Safety Evaluation Report is issued. The second pre-hearing conference will consider new or amended contentions, stipulations and admissions of fact, identification of witnesses, and the setting of a hearing schedule.

2.1023 Immediate effectiveness.

Proposed section 2.1023 provides for an immediate effectiveness review of the Licensing Board's initial decision on the issuance of a construction authorization. The Commission's existing regulations in 10 CFR 2.764 do not provide for an immediate effectiveness review. Rather 10 CFR 2.764 requires a Commission decision on the substantive merits of the Licensing Board decision before a construction authorization decision can be final. Proposed section 2.1023 would authorize the Director of the NRC Office of Nuclear Material Safety and Safeguards to allow DOE to proceed with construction, assuming a favorable Licensing Board decision, if the Commission did not suspend the Licensing Board decision after its supervisory immediate effectiveness review, or the Appeal Board did not stay the effectiveness of the initial decision under 10 CFR 2.788. The Appeal Board and the Commission would then undertake a review of the substantive merits of the initial Licensing Board decision. Issuance of the construction authorization under these circumstances would be the event that tolls the time period for determining whether the NWPA three year time frame for the decision on the construction authorization had been satisfied.

Schedule

In order to assist the Hearing Licensing Board in establishing a schedule for the HLW proceeding that will facilitate meeting the timeframe specified in the NWPA for a Commission decision on construction authorization, the Commission has prepared the following model timeline. This timeline is intended for general guidance only, and is not intended to suggest any predisposition by the Commission on the merits of DOE's future license application.

<u>Day</u>	<u>Regulation</u>	<u>Action</u>
0	2.101(f) (8) 2.105(a) (5)	Fed. Reg. Notice of Hearing
30	2.1014(a) (1) 2.715(c)	Pet. to intervene/request for hearing, w/ contentions Pet. for status as interested govt. participant

50	2.1014(b)	Answers to intervention & IGP petitions
70	2.1021	1st Prehearing Conference
100		1st Prehearing Conference Order: identifies participants in proceeding, admits contentions, and sets discovery and other schedules
	2.1018(b) (1) 2.1019	Deposition discovery begins
110	2.1015(b)	Appeals from 1st Prehearing Conference Order, w/ briefs
120	2.1015(b)	Briefs in opposition to appeals
150		AB order ruling on appeals from 1st Prehearing Conference Order
548		NRC staff issues SER
588	2.1014(a) (4)	Petitions to amend contentions based on SER
608	2.1014(b)	Answers to petitions to amend SER-related contentions
618	2.1022	2nd Prehearing Conference
648		2nd Prehearing Conference Order: rules on amended contentions, sets any further discovery schedule, and sets schedule for prefiled testimony and hearing
658	2.1015(b)	Appeals from 2nd Prehearing Conference Order, w/ briefs
668	2.1015(b)	Briefs in opposition to appeals
698		AB order ruling on appeals from 2nd Prehearing Conference Order
700	2.749 (set by LB)	Final Motions for summary disposition

720	2.749	Replies to final motions for summary disposition
730	Supp. Info.	Discovery complete
740		IB order on final motions for summary disposition
750	2.1015(b)	Appeals from final summary disposition order, w/ briefs
760		Evidentiary hearing begins
	2.1015(b)	Briefs in opposition to appeals from final summary disposition orders
790		AB order on appeals from final summary disposition orders
850		Evidentiary hearing ends
880	2.754(a) (1)	Applicant's proposed findings
890	2.754(a) (2)	Other parties' (except NRC staff's) proposed findings
900	2.754(a) (2)	NRC staff's proposed findings
905	2.754(a) (3)	Applicant's reply to proposed findings
995	2.760	Initial Decision
1005	2.788(a) 2.762(a) 2.1015(c)	Stay motions to AB Notices of Appeal

1015	2.788(d)	Replies to stay motions
1035		AB ruling on stay motion
	2.762(b)	Appellant's briefs
1045	2.788(a)	Stay motions to Commission
1055	2.788(d)	Replies to stay motions
1065	2.762(c)	Appellee's brief
1075	2.762(c)	NRC staff brief
1095	2.1023 Supp. Info.	Completion of NMSS and Commission supervisory review; Commission ruling on any stay motions; issuance of construction authorization; NWPA 3-year period tolled
1105	2.763	Oral argument on appeals
1165		Appeal Board decision
1180	2.1015(e) 2.786(b) (1)	Petitions for Commission review
1190	2.786(b) (3)	Replies to petitions
1250		Commission decision

### Topical Guidelines

The following topical guidelines are to be used for identifying the documentary material that should be submitted by ISS participants for entry into the ISS in searchable full text under proposed section 2.1003. The topical guidelines will also be used by the Pre-License Application Licensing Board for evaluating petitions for access to the ISS during the pre-license application phase under proposed section 2.1008.

#### I. CATEGORIES OF DOCUMENTS

- Technical reports and analyses including those developed by contractors
- QA/QC records including qualification and training records
- External correspondence
- Internal memoranda
- Meeting minutes, including DOE/NRC meetings, Commission meetings

- Drafts (i.e., those submitted for decision beyond the first level of management or similar criterion)
- Congressional Q's & A's
- "Regulatory" documents related to HLW site selection and licensing, such as:
  - Draft and final environmental assessments
  - Site Characterization Plans
  - Site characterization study plans
  - Site Characterization progress reports
  - Issue resolution reports
  - Rulemakings
  - Public and agency comments on documents
  - Response to public comments
  - Environmental Impact Statement, Comment Response Document, and related references
  - License Application (IA), IA data base, and related references
  - Topical reports, data, and data analysis
  - Recommendation Report to President
  - Notice of Disapproval, if submitted

## II. GENERAL TOPICS

1. Any document pertaining to the location and potential of valuable natural resources, hydrology, geophysics, tectonics (including volcanism), geomorphology, seismic activity, atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, proximity to components of the National Park System, the National Wildlife Refuge System, the National Wildlife and Scenic River System, the National Wilderness Preservation System, or National Forest Lands, proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored, spent fuel and nuclear waste transportation, safety factors involved in moving spent fuel or nuclear waste to a repository, the cost and impact of transporting spent fuel and nuclear waste to a repository site, the advantages of regional distribution in siting of repositories, and various geologic media in which sites for repositories may be located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14. Any document containing any data or analysis of ~~volcanic activity in~~ the volcanic system volcanism in the geologic setting of which Yucca Mountain is a part.

15. Any document containing any data or analysis of ~~events of~~ events of tectonic events taking at Yucca Mountain, ~~either at or beneath the surface of the ground, in all directions, or generally, or in the volcanic system of which Yucca Mountain is a part~~ or pertaining to the tectonic framework of the Yucca Mountain area or any document containing any data or analysis of faults with or without surface expression in the area of Yucca Mountain.

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

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

### III. SPECIFIC TOPICS

#### 1. The Site

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

B. GEOLOGIC CONDITIONS

1. Stratigraphy and volcanic history of the Yucca Mountain area
  - a. Caldera evolution and genesis of ash flows

- b. Timber Mountain Tuff
- c. Paintbrush Tuff
- d. Tuffaceous beds of Calico Hills
- e. Crater Flat Tuff
- f. Older tuffs
- g. sedimentary units
- h. basalts

- 2. Structure
- 3. Seismicity
- 4. Energy and mineral resources
  - a. Energy resources
  - b. Metals
  - c. Nonmetals
- 5. Paleontology
- 6. Mineralogy
- 7. Geomorphology
- 8. Tectonics
  - a. Faulting
  - b. Stress
  - c. Uplift/subsidence
  - d. Volcanism

C. HYDROLOGIC CONDITIONS

- 1. Surface water
- 2. Ground water
  - a. Ground water movement
  - b. Ground water quality
- 3. Present and projected water use in the area
- 4. Groundwater resources
- 5. Climatology
- 6. Meteorology

D. GEOCHEMISTRY

- 1. Rock chemistry of the overlying and underlying host units
- 2. Water chemistry of unsaturated or saturated zones
- 3. Alteration
- 4. Retardation and transport

E. ENVIRONMENTAL SETTING

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

2. Terrestrial and aquatic ecosystems
  - a. Terrestrial vegetation
    - i. Larrea-Ambrosia
    - ii. Larrea-Ephedra or Larrea-Lycium
    - iii. Coleogyne
    - iv. Mixed transition
    - v. Grassland-burn site
  - b. Terrestrial wildlife
    - i. Mammals
    - ii. Birds
    - iii. Reptiles
  - c. Special-interest species
  - d. Aquatic ecosystems
3. Air quality and weather conditions: Air quality
4. Noise
5. Aesthetic resources
6. Archaeological, cultural, and historical resources
7. Radiological background
  - a. Monitoring program
  - b. Dose assessment

F. TRANSPORTATION

1. Highway infrastructure and current use
2. Railroad infrastructure and current use

G. SOCIOECONOMIC CONDITIONS

1. Economic conditions
  - a. Nye County
  - b. Clark County
  - c. Lincoln County
  - d. Methodology
2. Population density and distribution
  - a. Populations of the State of Nevada
  - b. Population of Nye County
  - c. Population of Clark County
  - d. Population of Lincoln County
3. Community services
  - a. Housing
  - b. Education
  - c. Water supply
  - d. Waste-water treatment
  - e. Solid waste
  - f. Energy utilities
  - g. Public safety services
  - h. Medical and social services
  - i. Library facilities
  - j. Parks and recreation

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

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

C. ALTERNATIVE SITE CHARACTERIZATION ACTIVITIES

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

A. THE REPOSITORY

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

B. EXPECTED EFFECTS ON THE PHYSICAL ENVIRONMENT

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

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

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

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

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

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

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

B. PERFORMANCE ANALYSES

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

5. Transportation

A. REGULATIONS RELATED TO SAFEGUARDS

- 1. Safeguards
- 2. Conclusion

B. PACKAGINGS

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### Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

### Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C 3501 et seq.).

### Regulatory Analysis

The DOE analysis of the costs and benefits of the ISS (U.S. Department of Energy, "Licensing Support System Benefit-Cost Analysis" July, 1988) and companion DOE reports ("Preliminary Needs Analysis;" "Preliminary Data Scope Analysis;" and "Conceptual Design Analysis;") are available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies may be obtained from Francis X. Cameron, Office of General Counsel, U.S.Nuclear Regulatory Commission, Washington DC, 20555; 301-492-1623.

### Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The proposed rule affects participants in the Commission's HLW licensing proceeding. The substantial majority of these participants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

### Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

### List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear

power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

#### PART 2 - RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

AUTHORITY: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. In Part 2, a new Subpart J is added to read as follows:

Dated at Washington, D.C. this            day of            , 1988.

For the Nuclear Regulatory Commission.

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Samuel J. Chilk,  
Secretary of the Commission.

## 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.
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"ASCII File" means a computerized text file conforming to the American Standard Code for Information Interchange which represent characters and symbols.

"bibliographic header" means the minimum series of descriptive fields that a potential party, interested governmental participant, or party must 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 in which the original author or others in the concurrence process have non-concurred. A "circulated draft" meeting the above criterion includes a draft of a document that eventually becomes a final document, and a draft of a document that does become a final document due to either a decision not to finalize the document or because the passage of a substantial period of time in which no action has been taken on the document.

"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 fields and subject terms given to a document or other material.

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

"LSS Administrator" means the person within the U.S. Nuclear Regulatory Commission responsible for administration,

management, and operation of the Licensing Support System. The LSS 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 management chain reporting to the Director of the Office of Nuclear Material Safety and Safeguards. For purposes of this subpart the organizational unit within the NRC selected to be the LSS Administrator shall not be considered to be a party to the proceeding.

"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 DOE, 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 2.1014 of this subpart 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)(2)(ii), (iii), and (iv) of this subpart.

"Personal record" means a document in the possession of an individual associated with a party, interested governmental participant, or potential party that was not required to be created or retained by the party, interested governmental participant, or potential party, and can be retained or discarded at the possessor's sole discretion, or documents of a personal nature that are not associated with any business of the party, interested governmental participant, or potential party.

"potential party" means any person who, during the period before the 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 2.1010 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 of the DOE and its contractors, and the documentary material of all other parties, interested governmental participants and potential parties and their contractors. Access to the Licensing Support System by the parties, interested governmental participants, and potential parties 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.

(b) The Licensing Support System shall include documentary material not privileged under section 2.1006 or excluded under section 2.1005 of this subpart.

(c) The participation of the host State in the Licensing Support System during the pre-license application phase shall not have any affect on the State's exercise of its disapproval rights under Section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

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

#### 2.1003 Submission of material to the LSS.

(a) Subject to the exclusions in section 2.1005 of this subpart and paragraphs (c) and (d) of this section, each potential party, interested governmental participant or party, with the exception of the DOE and the NRC, shall submit to the LSS Administrator--

(1) Subject to paragraph (a)(3) of this section, an ASCII file, an image, and a bibliographic header, reasonably contemporaneous with its creation or acquisition, for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, 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.

(2) an image, a bibliographic header, and, if available, an ASCII file, no later than six months before the license application is submitted under section 60.21 of this chapter, for all documentary material (including circulated drafts but excluding preliminary drafts), generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party, on or before the date on which such potential party, interested governmental participant, or party was given access to the Licensing Support System.

(3) an image and bibliographic header for documentary material included under paragraphs (a)(1) and (a)(2) of this section that were acquired from a person that is not a potential party, party, or interested governmental participant.

(b) subject to the exclusions in section 2.1005 of this subpart, and subject to paragraphs (c) and (d) of this section, the DOE and the NRC shall submit to the LSS 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 but excluding preliminary drafts) generated by, or at the direction of, or acquired by, the DOE or the NRC after the date on which the Licensing Support System is available for access.

(2) an ASCII file, an image, and a bibliographic header no later than six months before the license application is submitted under section 60.22 of this chapter for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, the DOE or the NRC on or before the date on which the Licensing Support System is available for access.

(c)(1) each potential party, interested governmental participant, or party shall submit, subject to the claims of

privilege in Section 2.1006, an image, and a bibliographic header, in a time frame to be established by the access protocols under section 2.1011(d)(10) of this subpart, for all graphic oriented documents. Graphic oriented documentary material includes, raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, hand written or otherwise displayed in any hard copy form and which, while capable of being captured in electronic image by a digital scanning device may be captured and submitted to the LSS Administrator shall be in any form of image. Text embedded within such documents need not be separately entered in searchable full text.

Such graphic oriented documents may include:

- Calibration procedures, logs, guidelines, data and discrepancies;
- Gauge, meter and computer settings;
- Probe locations;
- Logging intervals and rates;
- Data logs in whatever form captured;
- Test data sheets;
- Equations and sampling rates;
- Sensor data and procedures;
- Data Descriptions;
- Field and laboratory notebooks;
- Analog computer, meter or other device print-outs;
- Digital computer print-outs;
- Photographs;
- Graphs, plots, strip charts, sketches;
- Descriptive material related to the information above.

(2) each potential party, interested governmental participant, or party, in a time frame to be established by the access protocols under section 2.1011(d)(10) of this subpart, shall submit, subject to the claims of privilege in Section 2.1006, only a bibliographic header for each item of documentary material that is not suitable for entry into the Licensing Support System in image or searchable full text. The header shall include all required fields and shall sufficiently describe the information and references to related information and access protocols. Whenever any documentary material is transferred to some other media, a new header shall be supplied. Any documentary material for which a header only has been supplied to the system shall be made available to any other party, potential party or interested governmental participant through the access protocols determined by the LSS

administrator under 2.1011(d)(10) or through entry upon land for inspection and other purposes pursuant to 2.1020.

(3) whenever documentary material described in paragraphs (c)(1) or (c)(2) of this section has been collected or used in conjunction with other such information to analyze, critique, support or justify any particular technical or scientific conclusion, or relates to other documentary materials as part of the same scope of technical work or investigation, then an appropriate bibliographic header shall be submitted for a table of contents describing that package of information, and documentary material contained within that package shall be named and identified.

(d) 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; or

(2) which constitutes confidential financial or commercial information; or

(3) which constitutes safeguards information under section 73.21 of this Chapter.

(e) in addition to the submission of documentary material under paragraphs (a) and (b) of this section, potential parties, interested governmental participants, or parties may request that another potential party's, interested governmental participant's, party's, or third party's, 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 documentary material during the licensing proceeding.

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

(g) Basic licensing documents generated by DOE such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by NRC such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be submitted to the LSS Administrator by the respective agency which generated the document.

(h)(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 LSS Administrator has certified, at least six months in advance of the submission of the license application, that the DOE has substantially complied with its obligations under this section.

(2)(i) The LSS Administrator shall evaluate the extent of the DOE's compliance with the provisions of this section at six month intervals beginning six months after his or her appointment under section 2.1011 of this subpart.

(ii) The LSS Administrator shall issue a written report of his or her evaluation of DOE compliance under paragraph (h)(1) of this section. The report shall include recommendations to the DOE on the actions necessary to achieve substantial compliance pursuant to paragraph (h)(1) of this section.

(iii) Potential parties may submit comments on the report prepared pursuant to paragraph (h)(2)(ii) to the LSS Administrator

(3)(i) In the event that the LSS Administrator does not certify substantial compliance under paragraph (h)(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 governed by subpart G of this part.

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

#### 2.1004 Amendments and additions.

(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 has been entered into the Licensing Support System by the LSS Administrator after the license application has been docketed, the submitter shall make reasonable efforts to 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 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 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.

#### 2.1005 Exclusions.

The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to section 2.1003 of this subpart, or through derivative discovery pursuant to section 2.1019(i) 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, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;

- (d) press clippings and press releases;
- (e) junk mail;
- (f) references cited in contractor reports that are readily available;
- (g) classified material subject to Subpart I of this Part.

2.1006 Privilege.

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

(b) Any document for which a claim of privilege is asserted but is denied in whole or in part by the Pre-license Application Licensing Board or the Licensing Board established for the high-level waste proceeding, hereinafter the "Hearing Licensing Board," shall be submitted by the party, interested governmental participant, or potential party that asserted the claim to--

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

(ii) to the LSS Administrator or to the Board, for entry into a Protective Order file, if the Board so directs under section 2.1010(b) or section 2.1018(c) of this subpart.

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be submitted for entry into the Licensing Support System pursuant to sections 2.1003(a) and 2.1003(b) of this subpart.

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 DOE, shall be provided at the headquarters of DOE, and at all DOE 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 NRC, shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC 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, parties, and interested governmental participants.

(5) Public access to the searchable full text and images of all the documents in the Licensing Support System, not privileged under section 2.1006, shall be provided by the LSS 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) Public availability of paper copies 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, interested governmental participants, and parties will be provided in the following manner--

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

(2) image access at remote locations at the requestor'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 requestors who meet the criteria in section 9.41 of this chapter.

(d) Documents submitted to the LSS Administrator for entry into the Licensing Support System shall not be considered as agency records of the LSS Administrator for purposes of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and shall remain under the custody and control of the agency or organization that submitted the documents to the LSS Administrator. Requests for access pursuant to FOIA to documents submitted by a Federal agency shall be transmitted to that federal agency.

#### 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 --

(1) the factors set out in section 2.1014(c)(1), (2), and (3) 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.

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

(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 2.1003, and agree to comply with the orders of the Pre-License Application Licensing Board established pursuant to section 2.1010 of this subpart.

#### 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 2.1003 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 the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the LSS Administrator pursuant to section 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, the documentary material specified in section 2.1003 of this subpart has been identified and submitted to the Licensing Support System.

#### 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 2.1008 of this subpart; disputes over the entry of documents during the pre-license application phase, including disputes relating to relevance and privilege; disputes relating to the LSS Administrator's decision on substantial compliance pursuant to section 2.1003(h) of this subpart; discovery disputes; disputes relating to access to the Licensing Support System; disputes relating to the design and development of the Licensing Support System by DOE or the operation of the Licensing Support System by the LSS Administrator under section 2.1011 of this subpart, including disputes relating to the implementation of the recommendations of the LSS Advisory Review Panel established under section 2.1011(e) of this subpart.

(2) The Pre-License Application Licensing Board shall be designated six months before access to the Licensing Support System is scheduled to be available.

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

(1) whether it is documentary material within the scope of this subpart;

(2) whether the material is excluded from entry into the Licensing Support System under section 2.1005 of this subpart;

(3) whether the material is privileged or otherwise excepted from disclosure under section 2.1006 of this subpart;

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

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

(6) 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, 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, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of section 73.21 of this chapter. The 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 Board 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 relevant, and not privileged, exempt from disclosure, or otherwise exempt

from entry into the Licensing Support System under section 2.1005 of this subpart, the potential party, interested governmental participant, or party who asserted the claim of withholding must submit the document to the LSS Administrator within two days for entry into the Licensing Support System.

(d) The service of all pleadings, discovery requests and answers, orders, and decisions during the pre-license application phase shall be made according to the procedures specified in section 2.1013(c) of this subpart.

(e) The Pre-License Application Licensing Board shall possess all the general powers specified in sections 2.721(d) and 2.718 of this part.

#### 2.1011 LSS Management and Administration.

(a) The Licensing Support System shall be administered by the LSS 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 LSS 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 LSS Administrator, the follow-on redesign and procurement of equipment necessary to maintain the Licensing Support System.

(2) With respect to the procurement undertaken pursuant to paragraph (b)(1) of this section, a representative of the LSS Administrator shall participate as a member of the Source Evaluation Panel for such procurement.

(3) DOE shall implement consensus advice from the LSS Advisory Review Panel under paragraph (f)(1) 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, including DOE and its contractors, or that is physically located on the premises of any party, interested governmental participant, or potential party, including DOE and that of its contractors.

(2) Nothing in this subpart shall preclude DOE, NRC, or any other potential party, interested governmental participant, or party from using the Licensing Support System computer facility for a records management system for documentary material independent of the Licensing Support System.

(d) The LSS 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 LSS Advisory Review Panel under paragraph (f) of this section that is consistent with the requirements of this subpart;

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

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

(4) make a concurrence decision, within thirty days of a request from DOE, on any redesign and related procurement performed by 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;

(6) evaluate and certify compliance with the requirements of this subpart under section 2.1003(h);

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

(8) receive and enter the documentary material specified in section 2.1003 of this subpart into the Licensing Support System in the appropriate format;

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

(10) establish 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 of 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 the LSS Advisory Committee members identified in paragraph (e)(2) of this section who wish to

serve within sixty days after designation of the LSS Administrator pursuant to paragraph (a) of this section. The LSS Administrator shall have the authority to appoint additional representatives to the Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the the NRC HLW Licensing Support System Advisory Committee.

(2) Pending the establishment of the LSS Advisory Review Panel under paragraph (e)(1) of this section, the NRC will establish a Licensing Support System Advisory Committee whose membership will initially include the State of Nevada, a coalition of affected units of local government in Nevada who were on the NRC HLW Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups who were on the NRC HLW Licensing Support System Advisory Committee and such other members as the Commission may from time to time determine to perform the responsibilities in paragraph (f) of this section.

(f)(1) The LSS Advisory Review Panel shall provide advice to--

(i) 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

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

(2) The responsibilities of the LSS Advisory Review Panel shall include advice on--

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

- (iv) a thesaurus and authority tables;
- (v) reasonable requirements for headers, the control of duplication, retrieval, display, image delivery, query response, and "user friendly" design;
- (vi) other duties as specified in this subpart or as directed by the LSS Administrator.

2.1012 Compliance.

(a) In addition to the requirements of section 2.101(f) of this part, the Director of the NRC Office of Nuclear Materials Safety and Safeguards may determine that the tendered application is not acceptable for docketing under this subpart, if the LSS Administrator has not issued the certification described in section 2.1003(h)(1) of this part.

(b) (1) A person including a potential party 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 it cannot demonstrate substantial and timely compliance with the requirements of section 2.1003 of this subpart at the time it requests 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 Hearing Licensing Board shall not make a finding of substantial and timely compliance pursuant to paragraph (b) of this subpart for any person 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 Licensing 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 or the requirements of this subpart.

2.1013 LSS use during the adjudicatory proceeding.

(a)(1) Pursuant to section 2.702, the Secretary of the NRC 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 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 and 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 LSS Administrator on a daily basis in order to provide next-day availability at the hearing.

(c)(1) All filings in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter shall be transmitted electronically by the submitter to the board(s), parties, the LSS Administrator, and the Secretary, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

(2) Filings required to be served shall be served upon either the parties and interested governmental participants, or their designated representatives. When a party or interested governmental participant has appeared by attorney, service must be made upon the attorney of record.

(3) Service upon a party or interested governmental participant is complete when the sender receives electronic acknowledgment ("delivery receipt") that the electronic submission has been placed in the recipient's electronic mailbox.

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

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

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

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

(d) Online access to the Licensing Support System, including a Protective Order File if authorized by a Board, shall be provided to the board(s), the representatives of the parties, interested governmental participants, and the witnesses while testifying, for use during the hearing. Use of paper copy, and other images, will also be permitted at the hearing.

#### 2.1014 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 within thirty days after the publication of the notice of hearing. Nontimely filings will not be entertained absent a determination by the Commission, the Hearing 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 satisfying 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 specific documentary material, or the absence thereof, that provides a basis for each contention; and

(iv) as to each contention, the specific regulatory or statutory requirement to which the contention is relevant.

(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 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 shall be made no later than forty days after the issuance of the SER. Any petition to amend contentions that is filed after this time shall include, in addition to the factors specified in paragraph (a)(1) of this section, 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 or interested governmental participant may file an answer to a petition for leave to intervene or a petition to amend contentions within twenty days after service of the petition.

(c) Subject to paragraph (a)(3) of this section, the Commission, the Hearing 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 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. In all other circumstances, such ruling body 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, or the designated Hearing 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 Hearing Licensing Board 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 Appeals.

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

(b) A notice of appeal from (i) a Pre-application Licensing Board order issued pursuant to section 2.1010 of this subpart, (ii) a Hearing Licensing Board First or Second Prehearing Conference Order issued pursuant to section 2.1021 or 2.1022 of this subpart, (iii) a Hearing Licensing Board order granting or denying a motion for summary disposition issued in accordance with section 2.749 of subpart G, or (iv) a Hearing Licensing Board order granting or denying a petition to add one or more contentions pursuant to section 2.1014(a)(4) of this subpart, shall be filed with the Atomic Safety and Licensing Appeal Board no later than ten (10) days after service of the order. A supporting brief shall accompany the notice of appeal. Any other party, interested governmental participant, or potential party may file a brief in opposition to the appeal no later than ten (10) days after service of the appeal.

(c) Appeals from a Hearing 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, interested governmental participants, 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, rulings not immediately appealable under paragraph (b) of this section.

(e) A party, interested governmental participant, 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, referral, or request for certification of a ruling shall not stay the proceeding or extend the time for the performance of any act.

#### 2.1016 Motions.

(a) All motions shall be addressed to the Commission or, when a proceeding is pending before a board, to the board. All motions, unless made orally on the record shall be filed according to the provisions of section 2.1013(c) of this subpart.

(b) 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) Within ten (10) days after service of a motion a party, potential party, or interested governmental participant 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 Board or the Secretary or the Assistant Secretary.

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

(e) Where the motion in question is a motion to compel discovery under section 2.720(h)(2) or section 2.1018(f), parties and interested governmental participants may file answers to the motion pursuant to paragraph (c) of this section. The Board in its 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 Board shall issue a written order on the motion which summarizes the views presented by the parties and interested governmental

participants unless the conference has been transcribed. This does not preclude the Board from issuing a prior oral ruling on the matter which is effective at the time of such ruling, provided that the terms of the ruling are incorporated in the subsequent written order.

2.1017 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. If the Licensing Support System is unavailable for more than four access hours of any day that would be counted in the computation of time, that day will not be counted in the computation of time.

2.1018 Discovery.

(a) Parties, potential parties, and interested governmental participants in the high-level waste licensing proceeding may obtain discovery by one or more of the following methods: Access to the documentary material in the Licensing Support System submitted pursuant to section 2.1003 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(c), and (d) of this subpart; Depositions upon oral examination pursuant to section 2.1019 of this subpart requests for admission pursuant to section 2.742 of this part; informal requests for information not available in the Licensing Support System; and interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

(2) Interrogatories and depositions upon written questions may be authorized by order of the discovery master appointed under paragraph (g) of this section, or if no discovery master has been appointed, by order of the Hearing Licensing Board, in the

event that the parties are unable, after informal good faith efforts, to resolve a dispute in a timely fashion concerning the production of information.

(b)(1) Parties and interested governmental participants, 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 person seeking discovery or to the claim or defense of any other person. 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 of this subpart shall begin after the issuance of the first pre-hearing conference order under section 2.1021 of this subpart, and shall be limited to the issues defined in that order or subsequent amendments to the order. 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) A party, potential party, or interested governmental participant 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, potential party's, or interested governmental participant's, representative (including its attorney, surety, indemnitor, insurer, or similar agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of its 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 Board shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party, potential party, or interested governmental participant concerning the proceeding.

(c) Upon motion by a party, potential party, interested governmental participant, or the person from whom discovery is sought, and for good cause shown, the Board may make any order which justice requires to protect a party, potential party, interested governmental participant or other person from annoyance, embarrassment, oppression, or undue burden, delay, 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, potential party, or interested governmental participant 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 Board; (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 Board may, on such terms and conditions as are just, order that any party, potential party, interested governmental participant or other person provide or permit discovery.

(d) Except as provided in paragraph (b) of this section, unless the Board upon motion, for the convenience of parties, potential parties, interested governmental participants, and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party, potential party, or interested governmental participant is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's, potential party's, or interested governmental participant's discovery.

(e) A party, potential party, or interested governmental participant 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 its response to include information thereafter acquired, except as follows:

(1) To the extent that written interrogatories are authorized pursuant to paragraph (a)(2) of this section, a party, or interested governmental participant is under a duty to seasonably supplement its response to any question directly addressed to (i) the identity and location of persons having knowledge of discoverable matters, and (ii) the identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the witness is expected to testify, and the substance of the witness's testimony.

(2) A party, potential party, or interested governmental participant, is under a duty seasonably to amend a prior response if it obtains information upon the basis of which (i)

it knows that the response was incorrect when made, or (ii) it knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Board or agreement of the parties, potential parties, and interested governmental participants.

(f)(1) If a deponent or a party, potential party, or interested governmental participant upon whom a request for discovery is served fails to respond or objects to the request, or any part thereof, the party, potential party, or interested governmental participant submitting the request or taking the deposition may move the Board, within five days after the date of the response or after failure 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, potential party, or interested governmental participant 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, party, potential party, or interested governmental participant 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 Board may make such a protective order as it is authorized to make on a motion made pursuant to paragraph (c) of this section.

(3) An independent request for issuance of a subpoena may be directed to a nonparty for production of documents. This section does not apply to requests for the testimony of the NRC regulatory staff pursuant to section 2.720(h)(2)(i) of this part.

(g) The Hearing Licensing Board pursuant to section 2.722 of this part may appoint a discovery master to resolve disputes between parties concerning informal requests for information as provided in paragraphs (a)(1) and (a)(2) of this section.

2.1019 Depositions upon oral examination and upon written questions.

(a) Any party or interested governmental participant desiring to take the testimony of any person by deposition on oral examination shall, without leave of the Commission or the Hearing Licensing Board give reasonable notice in writing to every other party and interested governmental participant, to the person to be examined and to the Hearing Licensing Board 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 her or the class or group to which he or she 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 at the option of the party or interested governmental participant taking the deposition.

(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 for submission into the Licensing Support System.

(e) Where the deposition is to be taken on written questions as authorized under section 2.1018(a) of this subpart, the party or interested governmental participant 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 asked. Within ten (10) days after service, any other party or interested governmental participant may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and transmitted to the LSS Administrator as in the case of a deposition on oral examination.

(f) A deposition will not become a part of the evidentiary record in the hearing unless received in evidence. If only part of a deposition is offered in evidence by a party or interested governmental participant, any other party or interested governmental participant may introduce any other parts. A party or interested governmental participant shall not be deemed to make a person its own witness for any purpose by taking his or her 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 or interested governmental participant at whose instance the deposition is taken.

(h) The deponent 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) of this section, to all parties and interested governmental participants. 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 in the Licensing Support System, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) 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--

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

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent 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) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party requests 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) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been entered into the Licensing Support System, and on which it intends to rely at hearing, be entered into the LSS by the deponent.

(6) The deposing party shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing a nonparty.

(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 Board, by subpoena or otherwise: Provided, That the Board 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, potential party, or interested governmental participant may serve on any other party, potential party, or interested governmental participant a request to permit entry upon designated land or other property in the possession or control of the party, potential party, or interested governmental participant 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) The request may be served on any party, potential party, or interested governmental participant without leave of the Commission or the Board.

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

(d) The party, potential party, or interested governmental participant upon whom the request is served shall serve on the party, potential party, or interested governmental participant submitting the request a written response within ten 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 Hearing Licensing Board will direct the parties, interested governmental participants 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 Hearing Licensing Board 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 Hearing Licensing Board to make such preliminary or final determination as to the parties and interested governmental participants, as may be appropriate;

(4) Establish a schedule for further actions in the proceeding; and

(5) Establish a discovery schedule for the proceeding taking into account the objective of meeting the three year time schedule specified in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10134.

(b) The Board may order any further formal and informal conferences among the parties and interested governmental participants including teleconferences, to the extent that it considers that such a conference would expedite the proceeding.

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

(d) The Board 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 and interested governmental participants in the proceeding, and provides for the submission of status reports on discovery.

#### 2.1022 Second Prehearing Conference.

(a) The Commission or the Hearing Licensing Board 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, interested governmental participants, or their counsel to appear at a specified time and place not later than seventy days after the Safety Evaluation Report is issued by the NRC staff for a conference to consider:

(1) Any new or amended contentions submitted under section 2.1014(a)(4) of this subpart;

(2) Simplification, clarification, and specification of the issues;

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

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

(5) The setting of a hearing schedule;

(6) Establishing a discovery schedule for the proceeding taking into account the objective of meeting the three year time schedule specified in section 114(d) of the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. 10134; and

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

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

(c) The Board shall enter an order which recites the action taken at the conference and the agreements by the parties, which limits the issues or defines the matters in controversy to be determined in the proceeding, which sets a discovery schedule, and which sets the hearing schedule.

2.1023 Immediate effectiveness of initial decision.

(a) Pending review and final decision by the Commission, an initial decision resolving all issues before the Board 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, notwithstanding the filing or pendency of an appeal or a petition for review pursuant to section 2.1015 of this subpart, 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 Board 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 (b) 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 Hearing Licensing Board to consider whether there is any significant basis for doubting that the facility will be constructed or 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 Hearing 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. 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 Hearing 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 construction authorization or license. This Commission review of uncontested issues is not part of the adjudicatory proceeding.

(3) No suspension of the effectiveness of a Hearing Licensing Board's initial decision or postponement of the Director's issuance of a construction authorization or 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 Commission to resolve the matters at issue. If the supervisory examination results in a suspension of the effectiveness of the Hearing Licensing Board's initial decision under paragraph (c)(1) of this section, the Commission will take review of the decision sua sponte and further proceedings relative to the contested matters at issue will be in accordance with procedures for participation by the DOE, the NRC staff, or other parties and interested governmental participants to the Hearing 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 DOE 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 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 2.1013 of this part.

2.764 is amended by deleting paragraph (d).

2.722 is amended by adding--

(a)(4) Discovery masters to rule on the matters specified in section 2.1018(a)(2) of this part.