UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 23, 1997

MEMORANDUM TO: Arnold E. Levin
Licensing Support System Administrator

FROM: John C. Voglewede
Office of Information Resources Management

SUBJECT: LSSNET RECORD MATERIAL, PART II

Attached for the record is a copy of supplemental information made available on the Licensing Support System Network (LSSNet) via the World Wide Web. This site was first made available in mid-September, 1996, for the use of the Licensing Support System Advisory Review Panel as well as the general public. Its availability was announced in a *Federal Register* Notice (Vol. 61, 225) dated Wednesday, November 20, 1996. Although the site is no longer in active use, its contents continue to be available at http://lssnet.llnl.gov.

The attached material represents the LSSNet site contents added between November 1, 1996, and October 20, 1997. Although some of the material is based on other hard copy material (e.g., SEC-97-154), all of it was generated in hypertext or other electronic form. Much of it exists only in electronic form. In order to comply with the requirements of the NRC Records Management Program (Handbook 3.53, Part IX), a record copy of this material is being placed in NUDOCS and the NRC File Center.

A first transmittal, documenting information made available at the time of LSSNet start up, was provided separately.

Attachments: As stated

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LSSNET SITE MAP

LSSNet Home Page

References
- Code of Federal Regulations, 10 CFR Part 2 Subpart J
  - Proposed Revisions to 10 CFR Part 2 Subpart J from Forum III
  - Proposed Revisions to 10 CFR Part 2 Subpart J from SECY-97-154
- LSS Advisory Review Panel Meeting Transcripts
  - May 2, 1996 Meeting (morning session)
  - May 2, 1996 Meeting (afternoon session)
- DOE "Licensing Support System Phase 2 Functional Requirements".
  - Disclaimer
  - Figure 9-1 of Functional Requirements memorandum.
- U.S. Nuclear Regulatory Commission Paper (SECY-96-020).
- U.S. Nuclear Regulatory Commission Paper (SECY-96-119).
  - [WordPerfect Version of SECY-96-119]
- U.S. Nuclear Regulatory Commission Paper (SECY-96-151).
- U.S. Nuclear Regulatory Commission Paper (SECY-96-178).
- NRC Regulatory Guide 3.69.
- Commission Memorandum on "Licensing Support System".
  - Federal Register Notice on LSSNet.
  - NRC Press Release (96-192) on LSSNet.
- U.S. Nuclear Regulatory Commission Paper (SECY-97-154).
  - SECY-97-154, Attachment 1 (Draft Federal Register Notice).
  - SECY-97-154, Attachment 2 (10 CFR 2, Subpart J text).
  - Atomic Safety and Licensing Board Panel comments on SECY-97-154.
    - ASLBP Analysis of SECY-97-154
  - NRC Staff Requirements Memorandum on SECY-97-154.
- LSSNet Phase I Comments.
- LSSNet Phase II Comments.
- LSSNet Phase III Comments.

- U.S. Nuclear Regulatory Commission
  - NRC Center for Nuclear Waste Regulatory Analysis
    - NRC/CNWRA Licensing Support System Test Bed
- U.S. Department of Energy
  - DOE Nevada Operations
    - DOE Office of Civilian Radioactive Waste Management
    - DOE/OCRWM Yucca Mountain Project Office
- U. S. Environmental Protection Agency
  - EPA Office of Air and Radiation
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  - Topic 2 - Computer technology in the LSS.
  - Topic 3 - Provisions of the LSS rule to reflect new technologies?
  - Topic 4 - Backlog of "uncaptured", and possibly irrelevant, information.
  - Topic 5 - Role of the LSS Administrator for a distributed system?
  - Topic 6 - Advice from potential users of the LSS.
  - Topic 7 - DOE application in hypertext.
  - Summary of Participant Commentary in Phase I
- LSSNet Forum II - Major Concerns in the Development of the LSS.
  - Topic 1 - Should the requirement for an LSS be eliminated?
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  - Topic 3 - Should DOE submit an electronic license application?
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  - Topic 1 - Participant views on draft proposed rule.
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- Disclaimer

Last updated 16 October 1997.

References

LSSNET REFERENCES

Code of Federal Regulations, 10 CFR Part 2 Subpart J
- Proposed Revisions to 10 CFR Part 2 Subpart J from Forum III
- Proposed Revisions to 10 CFR Part 2 Subpart J from SECY-97-154

LSS Advisory Review Panel Meeting Transcripts
- May 2, 1996 Meeting (morning session)
- May 2, 1996 Meeting (afternoon session)

Memorandum on "Licensing Support System Phase 2 Functional Requirements" by Stephan J. Brocoum (DOE) dated October 25, 1995.

U.S. Nuclear Regulatory Commission Paper (SECY-96-020), Licensing Support System Program Administration - Semiannual Report for the six-month period ending December 31, 1995, and dated January 30, 1996.

U.S. Nuclear Regulatory Commission Paper (SECY-96-119), Response to Public Comments on Draft Regulatory Guide, "Topical Guidelines for the Licensing Support System," dated May 31, 1996.

U.S. Nuclear Regulatory Commission Paper (SECY-96-151), Licensing Support System Program Administration - Semiannual Report for the six-month period ending June 30, 1996, and dated July 3, 1996.

U.S. Nuclear Regulatory Commission Paper (SECY-96-178), Action Plan to Address Outstanding LSS Issues, dated August 9, 1996.

Regulatory Guide 3.69, "Topical Guidelines for the Licensing Support System," dated September 1996.

Commission Memorandum on "Licensing Support System" dated November 4, 1996.
- Federal Register Notice on LSSNet dated November 20, 1996.
- NRC Press Release (96-192) on LSSNet dated November 20, 1996.

SECY-97-154, issued July 22, 1997.
- SECY-97-154, Attachment 1 (Draft Federal Register Notice)
- SECY-97-154, Attachment 2 (10 CFR 2, Subpart J comparative text)

Atomic Safety and Licensing Board Panel comments on SECY-97-154
- ASLBP Analysis of SECY-97-154

NRC Staff Requirements Memorandum on SECY-97-154 issued September 23, 1997.

LSSNet Phase I Comments for the period November 1, 1996 through February 25, 1997.

LSSNet Phase II Comments for the period March 1, 1997 through March 31, 1997.

LSSNet Phase III Comments for the period April 15, 1997 through June 30, 1997.

Hypertext versions of these documents are provided for informal reference only. In case of any question, please consult the record version of the document.

LSS-RELATED LINKS

U.S. Nuclear Regulatory Commission
NRC Center for Nuclear Waste Regulatory Analysis
NRC/CNWRA Licensing Support System Test Bed

U.S. Department of Energy
DOE Nevada Operations
DOE Office of Civilian Radioactive Waste Management
DOE/OCRWM Yucca Mountain Project Office

U. S. Environmental Protection Agency
EPA Office of Air and Radiation
EPA/OAR Yucca Mountain Homepage

State of Nevada Nuclear Waste Project Office

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Technical problems: *tech-info@lssnet.llnl.gov*

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Proposed Revisions to Code of Federal Regulations, Title 10, Part 2

Subpart J - Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

Source: 54 FR 14944, Apr. 14, 1989, unless otherwise noted

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CHANGES (ONLY) TO SUBPART A

§2.101(f)(8) The Director of Nuclear Materials Safety and Safeguards will cause to be published in the *Federal Register* a notice of docketing which identifies the State and location at which the proposed geological repository operations area would be located and will give notice of docketing to the governor of that State. The notice of docketing will state that the Commission finds that a hearing is required in the public interest, prior to the issuance of a construction authorization~~, and will recite the matters in §2.104(a) of this part~~.

~~§2.105(a)(5) A license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter~~;

FULL TEXT OF SUBPART J

§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 §2.101(f)(8) or §2.105(a)(5) of this part. The procedures in this subpart take precedence over the 10 CFR part 2, subpart G, rules of general applicability, except for the following provisions: §§2.702, 2.703, 2.704, 2.707, 2.709, 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, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790. *[56 FR 29410, June 27, 1991]*

§1.0001 - Definitions.

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 not become a final document due to either a decision not to finalize the document or the passage of a substantial period of time in which no action has been taken on the document.

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,~~ a party or potential party plans to produce either during discovery by subpoena or deposition or during the licensing of the likely candidate site for a geologic repository. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

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

Electronic Hearing Docket means the NRC information system that receives, distributes, stores, and retrieves the Commission's adjudicatory docket materials.

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.

Integrated Electronic Information means the material that is made available to participants in the proceeding noticed to consider a license to receive and possess high-livel radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter as part of the electronic hearing docket or document discovery granted thereto.

Interested governmental participant means any person admitted under §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 the purpose of this subpart means the DOE, the NRC staff, the host State and any affected Indian Tribe in accordance with §60.63(a) of this chapter, and a person admitted under §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 §§2.1014(a)(2) (ii) and (iii) 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 §2.1021(d) of this subpart, is granted access to the ~~Licensing Support System~~ electronic docket and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to §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.

Pre-License Application Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the pre-license application phase with jurisdiction specified at the time of designation.

Preliminary draft means any nonfinal document that is not a circulated draft.

Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, designated in the notice of hearing to preside.

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.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7795, Feb. 26, 1991]

~~§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 §2.1006 or excluded under §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~~ Availability of material ~~to the LSS.~~

(a) Subject to the exclusions in §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~~ make available to other potential parties, interested government participants or parties --

(1) ~~Subject to paragraph (a)(3) of this section, an ASCII~~ An electronic 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~~ the Commission opens document discovery pursuant to §____. Contemporaneous with the production of the electronic file will be an authentication statement that indicates where an authenticated image copy of the document can be obtained.

~~(2) An image, a bibliographic header, and, if available, an ASCII file, no later than six months before the license application is submitted under §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, 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) 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 §2.1005 of this subpart, and subject to paragraph~~s (c) and~~ (d) of this section, the DOE and the NRC shall ~~submit to the LSS Administrator~~ provide electronic access to --

(1) ~~An ASCII file, an image, and a bibliographic header, reasonably contemporaneous with its creation or acquisition, for a~~ll 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~~ Electronic Hearing Docket 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 §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~~ make available in electronic form, subject to the claims of privilege in §2.1006, ~~an image and a~~

~~bibliographic header, in a time frame to be established by the access protocols under §2.1011(d)(10) of this subpart, for all graphic-oriented documentary material. Graphic-oriented~~ documentary material that includes, raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, or 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 in any form of image~~. Text embedded within these 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; Text 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 §2.1011(d)(10) of this subpart, shall submit, subject to the claims of privilege in §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 material 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~~ create a bibliographic header for each documentary material --

(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 §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~~ made available in electronic form by the respective agency that 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~~ NRC 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 §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 any actions necessary to achieve substantial compliance pursuant to paragraph (h)(1) of this section.~~

~~(iii) The LSS administrator shall circulate each evaluation prepared pursuant to paragraph (h)(2)(i) of this section, and the written report prepared pursuant to paragraph (h)(2)(ii) of this section, to potential parties to the high level waste proceeding. Potential parties may submit comments on or objections to the evaluations prepared pursuant to paragraph (h)(2)(i) of this section or the report prepared pursuant to paragraph (h)(2)(ii) of this section, to the LSS Administrator within 30 days of issuance of the evaluation or report. Comments or objections not filed within this time period are waived.~~

(3)(i) In the event that the ~~LSS Administrator~~ NRC 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~~ NRC 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.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7795, Feb. 26, 1991]

§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.~~

~~(3) 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.~~

~~(c)(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.~~

(d) Any document that has not been ~~incorrectly excluded from the Licensing Support System~~ provided to other parties in electronic form must be ~~submitted to the LSS Administrator~~ identified in an electronic filing on the docket and made available for inspection and copying 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 Presiding Officer or the Presiding Officer designated for the high-level waste proceeding; provided, however, that the time for submittal under this paragraph will be stayed pending Officer action on a motion to extend the time for submittal.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7795, Feb. 26, 1991]

§2.1005 Exclusions.

The following material is excluded from ~~entry into the Licensing Support System~~ the requirement to provide electronic access, either ~~through initial entry~~ pursuant to §2.1003 of this subpart, or through derivative discovery pursuant to §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) Preferences 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 §2.1003(d) of this subpart, the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in §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 Presiding Officer or the Presiding Officer, must be ~~submitted~~ provided in electronic form by the party, interested governmental participant, or potential party that asserted the claim to --

~~(1) The LSS Administrator for entry into the Licensing Support System into an open access file; or~~

~~(2) To the LSS Administrator or to~~ the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §2.1010(b) or §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~~ provided for electronic access pursuant to §§2.1003(a) and 2.1003(b) of this subpart.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7795, Feb. 26, 1991]

§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-privielged 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; 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 §2.101(f)(8) or §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)~~ (a) 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 §9.41 of this chapter.~~

~~(d)~~ (b) Documents ~~submitted to the LSS Administrator for entry into the Licensing Support System~~ to which electronic access has been provided pursuant to this subpart shall not be considered as agency records of the ~~LSS Administrator~~ Nuclear Regulatory Commission or the Department of Energy unless and until they have been produced as a part of the docket of the proceeding pursuant to §2.702 for purposes of the Freedom of Information Act (FOIA), 5 U.S.C. 552, ~~and shall~~ if such

documents remain under the custody and control of the agency or organization that ~~submitted~~ identified the documents ~~to the LSS Administrator~~. Requests for access pursuant to the 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 Presiding Officer designated pursuant to §2.1010 of this subpart for electronic access to ~~the Licensing Support System~~ pre-licensing information.

(b) A petition must set forth with particularity the interest of the petitioner in gaining electronic access to ~~the Licensing Support System~~ Pre-License Application Information with particular reference to --

(1) The factors set out in §2.1014(c) (1), (2), and (3) of this subpart as determined in reference to the topical guidelines in the applicable NRC Regulatory Guide; or

(2) The criteria in §2.715(c) of this part as determined in reference to the topical guidelines in the applicable NRC Regulatory Guide.

(c) The Pre-License Application Presiding Officer 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 §2.1003 and agree to comply with the orders of the Pre-License Application Presiding Officer designated pursuant to §2.1010 of this subpart.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7795, Feb. 26, 1991]

§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~~ electronic document submission responsibilities;

(2) Establish procedures to implement the requirements in §2.1003 of this subpart;

(3) Provide training to its staff on the procedures for implementation of ~~Licensing Support System~~ electronic document submission 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~~ NRC pursuant to §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 §2.1003 of this subpart has been identified and ~~submitted to the Licensing Support System~~ made electronically available. Upon order of a duly appointed presiding officer, the responsible official shall update this certification.

§2.1010 Pre-License Application Presiding Officer.

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter (Pre-License Application Presiding Officer) to rule on all petitions for access to ~~the Licensing Support System~~ electronic documents submitted under §2.1008; disputes over the ~~entry~~ electronic availability 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 §2.1003(h); 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 §2.1011, including~~ disputes relating to the implementation of the recommendations of the ~~LSS~~ Advisory Review Panel established under §2.1011(e).

(2) The Pre-License Application Presiding Officer shall be designated six months before access to ~~the Licensing Support System~~ when integrated electronic information is scheduled to be available.

(b) The Pre-License Application Presiding Officer 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 §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 nondisclosure) 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 §73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for 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 §2.205. 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~~ production under §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~~ in accordance with the provisions of this subpart.

(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 §2.1013(c) of

this subpart.

(e) The Pre-License Application Presiding Officer shall possess all the general powers specified in §§2.721(d) and 2.718.

(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7796, Feb. 26, 1991]

§2.1011 ~~LSS management and administration~~ Management of Electronic Information.

(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 NRC, DOE, parties, and potential parties participating in accordance with the provisions of this subpart shall be responsible for obtaining 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~~ comply with the requirements for electronic document production and service.

~~(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 §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 party, potential party, or interested governmental participant, 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 §2.1003(h);~~

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

~~(8) Receive and enter the documentary material specified in §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 §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)~~(b)(1) ~~The LSS Administrator~~ Secretary of the Commission shall establish an ~~LSS~~ Advisory Review Panel composed 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~~ The Secretary 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 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~~ The Advisory Review Panel ~~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 High-Level Waste Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmenal groups who were on the NRC High-Level Waste Licensing Support System Advisory Committee and such other members as the Commission may from time to time designate 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~~ effectively use an electronic docket under paragraph (b) of this section; and

(ii) The ~~LSS Administrator~~ Secretary of the Commission on the operation and maintenance of the ~~Licensing Support System~~ electronic docket under ~~paragraph (d) of this section~~ the Commission's Rules of Practice (10 CFR Part 2).

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

(i) Format standards for the submission of documentary material to the ~~Licensing Support System~~ electronic docket 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 §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~~ requested by the Commission.

[54 FR 14944, Apr. 14, 1989, as amended at 55 FR 51401, Dec. 14, 1990]

§2.1012 Compliance.

(a) In addition to the requirements of §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 §2.1003(h)(1) of this part~~ Secretary of the Commission determines that it can not be effectively accessed through the Commission's electronic docket.

(b)(1) A person, including a potential party granted access to the ~~Licensing Support System~~ electronic information under §2.1008 of this subpart, shall not be granted party status under §2.1014 of this part, or status as an interested governmental participant under §2.715(c) of this part, if it cannot demonstrate substantial and timely compliance with the requirements of §2.1003 of this subpart at the time it requests participation in the high-level waste licensing proceeding under either §2.1014 or §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 subsequent compliance with the requirements of §2.1003 of this subpart. Admission of such a party or interested governmental participant under §2.1014 of this subpart or §2.715(c) of this part, respectively, shall be conditioned on accepting the status of the proceeding at the time of admission.

(c) The Presiding Officer shall not make a finding of substantial and timely compliance pursuant to paragraph (b) of this section for any person who is not in compliance with all applicable orders of the Pre-License Application Presiding Officer designated pursuant to §2.1010.

(d) Access to the ~~Licensing Support System~~ pre-application electronic docket may be suspended or terminated by the Pre-License Application Presiding Officer or the Presiding Officer for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-License Application Presiding Officer or the Presiding Officer or the requirements of this subpart.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7796, Feb. 26, 1991]

§2.1013 Use of ~~LSS~~ the electronic docket during the ~~adjudicatory~~ proceeding.

(a)(1) Pursuant to §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 in an electronic form 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~~ the Secretary, upon the determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket 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~~ electronically produced for entry in the electronic docket 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~~ electronic docket 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~~ electronic docket 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 respository operations area pursuant to part 60 of this chapter shall be transmitted electronically by the submitter to the Presiding Officer, 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 completed 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 §§2.708 and 2.701 of this part.~~

~~(6)~~ All Presiding Officer and Commission issuances and orders will be transmitted electronically to the parties~~,~~ and interested governmental participants~~, and the LSS Administration~~.

(d) Online access to the ~~Licensing Support System~~ electronic docket , including a Protective Order File if authorized by a Presiding Officer, shall be provided to the Presiding Officer, the representatives of the parties and 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.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7796, Feb. 26, 1991]

§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 §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 §2.715(c) of this part, shall be filed within thirty days after the publication of the notice of hearing in the Federal Register. Nontimely filings will not be entertained absent a determination by the Commission, or the Presiding Officer 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 paragraphs (a)(2) and (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 that petitioner seeks to have litigated in the matter;

(iii) With respect to each contention:

(A) A specific statement of the issue of law or fact to be raised or controverted.

(B) A brief explanation of the basis of the contention.

(C) A concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.

(D) Sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This showing must include reference to the specific documentary material that provides a basis for the contention, or if the petitioner believes that any documentary material fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. In determining whether a genuine dispute exists on a material issue of law or fact, a dispositive factor shall be whether the contention, if proven, would be of no consequence in the proceeding because it would not entitle the petitioner to relief.

(E) The specific regulatory or statutory requirement to which the contention is relevant.

(3) Any petitioner who fails to satisfy paragraphs (a)(2) (ii) and (iii) 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, and 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 §§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, or the Presiding Officer 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, the Commission or Presiding Officer shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

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

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

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

(4) The failure of the petitioner, having access to the electronic docket, to participate as a potential party ~~in the Licensing Support System~~.

(5) In determining whether a genuine dispute exists on a material issue of law or fact, whether the contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.

(d) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, or the designated Presiding Officer may direct in the interests of:

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

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

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

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

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

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

(h) If the Commission or the Presiding Officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the Commission or the Presiding Officer.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7796, Feb. 26, 1991]

§2.1015 Appeals.

(a) No appeals from any Pre-License Application Presiding Officer or Presiding Officer order or decision issued under this subpart are permitted, except as prescribed in paragraphs (b), (c), and (d) of this section.

(b) A notice of appeal from (1) a Pre-License Application Presiding Officer order issued pursuant to §2.1010, (2) a Presiding Officer First or Second Prehearing Conference Order issued pursuant to §2.1021 or §2.1022, (3) a Presiding Officer order granting or denying a motion for summary disposition issued in accordance with §2.1025 of this part, or (4) a Presiding Officer order granting or denying a petition to amend one or more contentions pursuant to §2.1014(a)(4), must be filed with the Commission no later than (10) days after service of the order. A supporting brief must 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 days after service of the appeal.

(c) Appeals from a Presiding Officer initial decision or partial initial decision must be filed and briefed before the Commission in accordance with the following requirements.

(1) Notice of appeal. Within ten (10) days after service of an initial decision, any party may take an appeal to the Commission by filing a notice of appeal. The notice shall specify:

(i) The party taking the appeal; and

(ii) The decision being appealed.

(2) Filing appellant's brief. Each appellant shall file a brief supporting its position on appeal within thirty (30) days (40 days if Commission staff is the appellant) after the filing of notice required by paragraph (a) of this section.

(3) Filing responsive brief. Any party who is not an appellant may file a brief in support of or in opposition to the appeal within thirty (30) days after the period has expired for the filing and service of the brief of all appellants. Commission staff may file a responsive brief within forty (40) days after the period has expired for the filing and service of the briefs of all appellants. A responding party shall file a single responsive brief regardless of the number of appellants' briefs filed.

(4) Brief content. A brief in excess of ten (10) pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited.

(i) An appellant's brief must clearly identify the errors of fact or law that are the subject of the appeal. An intervenor-appellant's brief must be confined to issues which the intervenor-appellant placed in controversy or sought to place in controversy in the proceeding. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must also be provided.

(ii) Each responsive brief must contain a reference to the precise portion of the record which supports each factual assertion made.

(5) Brief length. A party shall not file a brief in excess of seventy (70) pages in length, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc. A party may request an increase of this page limit for good cause. Such a request shall be made by motion submitted at least seven (7) days before the date upon which the brief is due for filing and shall specify the enlargement requested.

(6) Certificate of service. All documents filed under this section must be accompanied by a

certificate reflecting service upon all other parties to the proceeding.

(7) Failure to comply. A brief which in form or content is not in substantial compliance with the provisions of this section may be stricken, either on motion of a party or by the Commission on its own initiative.

(d) When, in the judgment of a Pre-License Application Presiding Officer or Presiding Officer, 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 Pre-License Application Presiding Officer or Presiding Officer may refer the ruling promptly to the Commission, and shall provide notice of this referral to the parties, interested governmental participants, or potential parties. The parties, interested governmental participants, or potential parties may also request that the Pre-License Application Presiding Officer or Presiding Officer certify, pursuant to §2.718(i) of this part, rulings not immediately appealable under paragraph (b) of this section.

(e) 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.

[56 FR 7797, Feb. 26, 1991, as amended at 56 FR 29410, June 27, 1991]

§2.1016 Motions.

(a) All motions shall be addressed to the Commission or, when a proceeding is pending before a Presiding Officer, to the Presiding Officer. All motions, unless made orally on the record, shall be filed according to the provisions of §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 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 Presiding Officer or the Secretary or the Assistant Secretary.

(d) The Presiding Officer 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 §2.720(h)(2) of this part or §2.1018(f) of this subpart, parties, potential parties, and interested governmental participants may file answers to the motion pursuant to paragraph (c) of this section. The Presiding Officer 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 Presiding Officer shall issue a written order on the motion which summarizes the views presented by the parties, potential parties, and interested governmental participants unless the conference has been transcribed. This does not preclude the Presiding Officer from issuing a prior oral ruling on the matter which is effective at the time of its issuance, provided that the terms of the ruling are incorporated in the subsequent written order.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7797, Feb. 26, 1991]

§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, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the ~~Licensing Support System~~ electronic docket 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)(1) 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 ~~§2.1003 of~~ this subpart; entry upon land for inspection, access to raw data, or other purposes pursuant to §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 §2.1003 (c) and (d) of this subpart; depositions upon oral examination pursuant to §2.1019 of this subpart; requests for admission pursuant to §2.742 of this subpart; informal requests for information ~~not available in the Licensing Support System,~~ such as the names of witnesses and the subjects they plan to address; 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 Presiding Officer, 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, potential 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 §§2.1018(a)(2) and 2.1019 of this subpart, all other discovery shall begin during the pre-license application phase. Discovery pursuant to §§2.1018(a)(2) and 2.1019 of this subpart shall begin after the issuance of the first pre-hearing conference order under §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 documentary material 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, potential party, or interested governmental participant 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 these materials when the required showing has been made, the Presiding Officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party, 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 Presiding Officer may make any order that 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 Presiding Officer; (6) that, subject to the provisions of §2.790 of this part, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (7) that studies and evaluations not be prepared. If the motion for a protective order is denied in whole or in part, the Presiding Officer may, on such terms and conditions as are just, order that any party, potential party, interested governmental participant or other person provide or permit discovery.

(d) Except as provided in paragraph (b) of this section, and unless the Presiding Officer 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~~ electronic form to the NRC electronic docket 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' 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 Presiding Officer or agreement of the parties, potential parties, and interested governmental participants.

(f)(1) If a deponent of 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 Presiding Officer, 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, interested governmental participant, or other person 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 Presiding Officer 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 §2.720(h)(2)(i) of this part.

(g) The Presiding Officer pursuant to §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.

[54 FR 14944, Apr. 14, 1989, as amended at 56 FR 7797, Feb. 26, 1991]

§2.1019 Depositions.

(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 Presiding Officer, give reasonable notice in writing to every other party and interested governmental participant, to the person to be examined, and to the Presiding Officer of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or 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~~ an electronic copy of the deposition to the NRC Secretary for entry into the electronic docket.

(e) Where the deposition is to be taken on written questions as authorized under §2.1018(a)(2) 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 and interested governmental participant 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 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~~ in electronic form to the NRC Secretary for entry into the electronic docket 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 electronic 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~~ served and are part of the electronic docket. All documents that are not identical to documents already in the ~~Licensing Support System~~ electronic docket, 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~~ electronic docket, 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~~ provided electronically.

(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 or interested governmental participant requests that have not already been ~~entered into the Licensing Support System~~ provided electronically 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~~ provided electronically, and on which it intends to rely at hearing, be entered into the ~~LSS~~ electronic docket by the deponent.

(6) The deposing party or interested governmental participant 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 someone other than a party or interested governmental participant.

(j) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the Presiding Officer, by subpoena or otherwise:

Provided, That the Presiding Officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations and the testimony sought is not reasonably obtainable from another source by any party, require the attendance and testimony of named NRC personnel.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7797, Feb. 26, 1991]

§2.1020 Entry upon land for inspection.

(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 §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 Presiding Officer.

(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.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7797, Feb. 26, 1991]

§2.1021 First prehearing conference.

(a) In any proceeding involving an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter the Commission or the Presiding Officer will direct the parties, interested governmetal 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 Presiding Officer may deem appropriate, for a conference to:

(1) Permit identification of the key issues in the proceeding;

(2) Take any steps necessary for further identification of the issues;

(3) Consider all intervention petitions to allow the Presiding Officer to make such preliminary or final determination as to the parties 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(d).

(b) The Presiding Officer 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 Presiding Officer shall enter an order which recites the action taken at the conference, the schedule for further actions in the proceeding, and 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.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7797, Feb. 26, 1991]

§2.1022 Second prehearing conference.

(a) The Commission or the Presiding Officer in a proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall direct the parties, interested governmental participants, or their counsel to appear at a specified time and place not later than thirty days after the Safety Evaluation Report is issued by the NRC staff for a conference to consider:

(1) Any amended contentions submitted under §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(d); 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 Presiding Officer shall enter an order which recites the action taken at the conference and the agreements by the parties, limits the issues or defines the matters in controversy to be determined in the proceeding, sets a discovery schedule, and sets the hearing schedule.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7797, Feb. 26, 1991]

§2.1023 Immediate effectiveness.

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

(1) As provided in any order issued in accordance with §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 §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 respository operations area, or amendments thereto, following an initial decision resolving all issues before the Presiding Officer in favor of the licensing action, upon making the appropriate licensing findings, except --

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

(2) As provided in any order issued in accordance with §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 Presiding Officer 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 Presiding Officer 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 Presiding Officer 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 Presiding Officer'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 Presiding Officer'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 Presiding Officer 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 days of service of the Commission's written statement.

[54 FR 14944, Apr. 14, 1991, as amended at 56 FR 7797, Feb. 26, 1991]

§2.1025 Authority of the Presiding Officer to dispose of certain issues on the pleadings.

(a) Any party may move, with or without supporting affidavits, for a decision by the Presiding Officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may file an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall annex to any answer opposing the motion a separate, short, and concise, statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement to be filed by the moving party will be deemed to be admitted unless controverted by the statement required to be filed by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto may be entertained. The Presiding Officer may dismiss summarily or hold in abeyance motions filed shortly before the hearing commences or during the hearing if the other parties or the Presiding Officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion.

(b) Affidavits must set forth those facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated therein. The Presiding Officer may permit affidavits to be supplemented or opposed by further affidavits. When a motion for summary disposition is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of its answer; its answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, must be rendered.

(c) The Presiding Officer shall render the decision sought if the filings in the proceeding show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction authorization for a geologic repository operations area, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the authorization must be issued.

[56 FR 7798, Feb. 26, 1991]

§2.1026 Schedule.

(a) Subject to paragraphs (b) and (c) of this section, the Presiding Officer shall adhere to the schedule set forth in appendix D of this part.

(b)(1) Pursuant to §2.711, the Presiding Officer may approve extensions of no more than 15 days beyond any required time set forth in this subpart for a filing by a party to the proceeding. Except in the case of exceptional and unforseen circumstances, requests for extensions of more than 15 days must be filed no later than 5 days in advance of the required time set forth in this subpart for a filing by a party to the proceeding.

(2) Extensions beyond 15 days must be referred to the Commission. If the Commission does not disapprove the extension within 10 days of receiving the request, the extension will be effective. If the Commission disapproves the extension, the date which was the subject of the extension request will be set for 5 days after the Commission's disapproval action.

(c)(1) The Presiding Officer may delay the issuance of an order up to thirty days beyond the time

set forth for the issuance in appendix D.

(2) If the Presiding Officer anticipates that the issuance of an order will not occur until after the thirty day extension specified in paragraph (c)(1) of this section, the Presiding Officer shall notify the Commission at least ten days in advance of the scheduled date for the milestone and provide a justification for the delay.

[56 FR 7798, Feb. 26, 1991]

§2.1027 Sua Sponte.

In any initial decision in a proceeding on an application to receive and possess waste at a geologic repository operations area, the Presiding Officer, other than the Commission, shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding.

[56 FR 7798, Feb. 26, 1991]

A (150KB) hypertext version of the DOE memorandum on Licensing Support System Phase 2 Functional Requirements by Stephan J. Brocoum (DOE) dated October 25, 1995 is provided for informal reference only. In the event of any question, please consult the record version of this document.

Return to References

Department of Energy
Office of Civilian Radioactive Waste Management
Yucca Mountain Site Characterization Office
P.O. Box 98608
Las Vegas, NV 89193-8608

OCT 2 5 1995

Distribution

DISTRIBUTION OF "LICENSING SUPPORT SYSTEM PHASE 2 FUNCTIONAL REQUIREMENTS" (SCPB: N/A)

The enclosed document, "Licensing Support System Phase 2 Functional Requirements," identifies the Phase 1 and Phase 2 Licensing Support System (LSS) functional requirements as approved by the LSS Advisory Review Panel. The U.S. Nuclear Regulatory Commission (NRC) has concurred with publishing this document at this time; however, the NRC has asked that I note in this cover letter that at a later time the NRC may propose four items, not required in the current regulation, to the Advisory Review Panel for further consideration as possible Phase 2 LSS requirements. These are:

1. Viewing Options. Two images either from the same document or from two different documents shall be capable of being viewed simultaneously.

2. Priority Users. A capability shall be provided for an authorized user to establish and invoke "priority user" categories.

3. Digital Signature. The LSS shall provide for the use of digital signature technology for electronic document submittals from parties.

4. Hyper-Linking. The LSS shall provide a hyper-linking capability.

The Phase 1 and Phase 2 requirements documents establish a foundation for the design, development, and acquisition of an LSS. However, the changes in the waste management program that are currently being contemplated within the U.S. Congress make it apparent that any overall schedule for design, development, and acquisition of an LSS will have to be addressed after those program changes are clearly articulated and understood. Thus, we have deemed it to be particularly important that we document these Phase 2 LSS functional requirements at this time to assure that future LSS activities can benefit from the concurrence and agreement of the stakeholders reflected in these functional requirements.

If you have any questions on the functional requirements documents, please feel free to contact Claudia M. Newbury at (702) 794-7942.

Stephan J. Brocoum
Assistant Manager for
Suitability and Licensing

AMSL:CMN-227

Enclosure:
Licensing Support System Phase 2 Functional Requirements

cc w/encl:
J. G. Gandi, YMSCO, NV

cc w/o encl:
S. J. Brocoum, YMSCO, NV
R. V. Barton, YMSCO, NV

Distribution--Memorandum dated OCT 2 5 1995

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Civilian Radioactive Waste Management System
Management and Operating Contractor

Licensing Support System (LSS)
Phase 2 Functional Requirements

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Revision 0

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EXECUTIVE SUMMARY

The LSS rule in 10 CFR 2 Subpart J mandates the Licensing Support System as an electronic information system to facilitate the discovery process and the motions process of the license proceedings under the Civilian Radioactive Waste Management Program. It gives the U.S. Department of Energy the responsibility to design and develop the LSS, and the Nuclear Regulatory Commission the responsibility to operate the system.

This document specifies the functional, performance, availability and security requirements of the Licensing Support System (LSS). It embodies the higher level requirements of the Phase I LSS Requirements Document, and is intended to stand alone as a description of LSS capabilities which DOE will implement.

The LSS will provide automated search of document headers and full text, and retrieval of document headers, text and electronic images in support of the discovery process. Access will be provided at multiple locations (listed in Section 9), including public reading rooms. In addition dial-in access will be provided. The LSS will also facilitate the proceedings by providing electronic messaging for the rapid delivery of filings (motions, service, etc.). The official record material in the LSS will provide an electronic docket of the proceedings, including the daily transcripts generated during the hearings.

Most of the documentary material in the LSS will be submitted by LSS parties in electronic format and imported into the LSS. In addition, the LSS will provide scanning and image-to-text conversion capability to allow the capture of material in paper format.

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1.0 INTRODUCTION

The Civilian Radioactive Waste Management Program is based upon a strategy of emplacing high level radioactive waste in a permanent underground geologic disposal facility. The license to construct this facility must be issued by the Nuclear Regulatory Commission (NRC) in a process described in 10 CFR 2 and related regulations. Subpart J of 10 CFR 2 mandates the Licensing Support System (LSS) as an electronic information system to facilitate the discovery process and the motions process of the license hearings. It gives the U.S. Department of Energy the responsibility to design and develop the LSS, and the Nuclear Regulatory Commission the responsibility to operate the system.

As part of their responsibility, DOE is issuing this system requirements document to identify, scope and bound the requirements of the LSS, allowing the design and development process to proceed. Accordingly, this document will serve as a vehicle to communicate the planned functions and capabilities of the LSS to interested parties, including the LSS Advisory Review Panel (LSSARP), the NRC LSS Administrator and his staff and the public. The LSSARP and a Technical Working Group appointed by the panel have been involved in the creation of this document, providing review and comments.

1.1 Purpose of Document: Clarify, Scope, and Bound Requirements

This document addresses the following issues:

- The LSS Rule (10 CFR 2 Subpart J) describes several key system requirements at a high level, but does not sufficiently scope and bound LSS requirements to allow system development and implementation to proceed. The Licensing Support System Phase I Functional Requirements document[1] captures the system-relevant requirements at a high level, but not the detailed computer system requirements needed for system design.

- LSS system descriptions represented in DOE requirements documents in the 1990 time frame[2] have been overcome by technology, and are not considered appropriate as the current system requirements specifications[3]. In addition, these documents were never formally accepted by the LSSARP as representing the system requirements.

- Numerous discussions and briefings related to LSS capabilities have taken place over the past several years, including those at LSSARP meetings, briefings to the LSS Administrator's staff, and less formal occasions. As a result, persons with an interest in the LSS have formed concepts and opinions about what the system will or will not do which may be undocumented and inconsistent with the views of others.

- The need to make rapid forward progress on the implementation and development of the LSS cannot be met without rapid closure on a succinct list of system requirements. This document will serve as the vehicle to achieve closure on the system requirements and enable development to proceed.

By succinctly describing all aspects of the Licensing Support System in a single document, the DOE hopes to clarify the exact functions which the LSS will perform, reducing the possibility that the delivered system will not meet the expectations of the user community. It is important to recognize that this document, which embodies the higher level requirements of the Phase I LSS Requirements Document, is intended to stand alone as a description of LSS capabilities which DOE will implement. In short, if a capability is not described in this document, it is not planned for LSS implementation. If it is described as a requirement in this document, it is planned for implementation as part of the LSS.

1.2 Document Organization

This document begins with a concept of operations (Section 2), setting the context for the formal requirements which follow. Requirements are then presented in the following categories:

- Primary functional requirements (document capture, query and retrieval, electronic messaging, and official records material functions). (Section 3)
- System Administration requirements. (Section 4)
- Functions necessary to assure security and data integrity (access control, data quality protection.) (Section 5)
- Key LSS data elements (the format of the LSS header, for example).(Section 6)
- Performance and capacity requirements (response time, storage capacity.)(Section 7)
- Reliability, Availability, and Maintainability Requirements (assuring system functions are available when needed.) (Section 8)
- LSS site requirements (where the system will be located, and what capabilities will be available at each site.). (Section 9)

Finally, this document provides guidelines for system design (Section 10) which are intended to ensure that the system is designed with flexibility to accommodate growth and technology insertion.

1.3 Relationship Between Requirements and System Design

An important goal of this document is to present LSS requirements at a sufficient level of detail to clarify the essential capabilities of the LSS without overly constraining design. By not overly constraining the design, this document encourages the integration of various Commercial Off The Shelf (COTS) software and hardware components to provide the required capabilities. Over-specification of requirements, especially the details of the user interface (screen layout and displays) can severely limit the use of COTS products, and is therefore avoided.

1.4 Requirements Statement Format

The LSS Phase 2 requirements are written to stand alone as testable requirements, independent of the explanatory text of this document. Requirements are presented in the following format:

LSS2-nnn
Short Title. The LSS shall ... (Requirements statement). [LSS I -nnn]

Comment: Text of the comment.

Each Phase 2 requirement is identified b a unique alphanumeric sequence: LSS2-nnn, where LSS2- indicates a Phase 2 LSS requirement, and "n" is a digit from 0 to 9, providing unique identification.

The bracketed requirement identifier at the end of the statement, [LSS1-nnn], references the parent

requirement in the LSS Phase I requirements, which can be found in Appendix A.

The Short title is a meaningful title which can be used in tables and summaries to refer to a requirement without repeating the entire requirement statement.

The requirement statement ("The LSS shall...") specifies the Phase 2 requirement.

The comment, which is optional, is used to clarify some requirements, sometimes giving examples of designs which would fulfill the requirement. The comment is not a testable requirement, but is intended to help the reader in correctly interpreting the requirement.

In some cases a requirement is further broken down into sub-requirements, identified as follows:

LSS2-nnn Summary Requirement. Summary requirement statement. [LSS1-nnn]

LSS2-nnn-01 First Subrequirement. Statement for first subrequirement. [LSS1-nnn]

LSS2.nnn-02 Second Subrequirement. Statement for second subrequirement. [LSS1-nnn]

During system testing, the parent requirement will not be satisfied unless all the subrequirements are satisfied.

2.0 LSS CONCEPT OF OPERATIONS

The LSS Concept of Operations describes what functionality the LSS is to provide, who the users will be, when and where the LSS will be available, and how the LSS will be used. The Concept of Operations does not specify system requirements nor dictate procedural requirements. Its purpose is to provide a conceptual understanding of the anticipated use of the LSS, as a basis for understanding the requirements defined in Sections 3 through 10.

2.1 Introduction

2.1.1 The LSS Mission

The Nuclear Waste Policy Act (NWPA), as amended, requires NRC to review, and issue a final decision approving or disapproving, DOE's license application for construction authorization of a geologic repository within three years of the date that the license application is submitted. In order to help NRC and the involved participants complete the licensing proceedings within the allotted three year time frame, the LSS electronic information management system is to:

- Expedite the document discovery process by replacing time-consuming manual searches of the documentary materials, expected to be on the order of tens of millions of pages, with computerized full text searches, and
- Expedite filings, services, rulings, etc., by replacing long postal mailing times with electronic messaging.

2.1.2 Summary of LSS Functionality

The LSS is to provide hardware and software for:

- The capture of documentary materials (4) submitted in electronic form by the participants (5)
- The capture of the official docket in electronic form, consisting of the official record materials of the Licensing Proceedings, e.g., daily transcripts, list of exhibits, motions filed, depositions, etc.
- The electronic filing, service, and proof of service for motions, rulings, etc.,

- The retrieval, display and print, of the headers, page images, and text of the documentary materials (for document discovery), using field-oriented and full text searches
- The retrieval, display and print, of the headers, page images, and text of the official record materials, using field-oriented and full text searches
- The requesting of printed copies of headers, page images, and text of the documentary materials, and the official record materials.

2.1.3 LSS Users

The users of the LSS fall basically into 4 categories:

- The Participants,
- The Presiding Officers and NRC Secretary,
- The LSSA, System Administration and Capture personnel, and
- The Public.

All users will access the LSS via controlled accounts, established by the LSSA's System Administration personnel, where each account has it's own unique user_id and password.

2.1.3.1 Participants

The "participants" to the Licensing Proceedings will include the DOE, the NRC, the State of Nevada, and others, e.g., the affected units of local government and industry. All participants will be provided equivalent access to the LSS. The LSSA will establish one or more controlled accounts per participant. If a participant organization has more than one account, then one or more account(s) will be considered the "account(s) of the attorney(s) of to which all services should be sent.

Participants will access the LSS via dedicated interactive retrieval stations at the locations defined in Section 9.0, Table 9-1, and remotely using their own computers, to:

- Perform document discovery via field-oriented and full text searches against the headers and/or text of the LSS documentary materials holdings,

- Perform field-oriented and full text searches against the headers and/or text of the official docket,

- Display or print the headers, page image(s), and page text(s), of the documentary materials or official record materials identified by searches,

- Request paper copies of the headers, page image(s), and page text(s) of documentary materials or official record materials, and

- File motions, serve other participants, etc., via electronic messages.

The participants will also have access to "candidate" official record materials.

2.1.3.2 Presiding Officers and NRC Secretary

The Pre-Licensing Application Presiding Officer (PLAPO) and the Presiding Officer (PO) are responsible for overseeing the licensing proceedings prior to and after docketing of the License Application (LA), respectively. The Secretary of the NRC is responsible for establishing and maintaining the official docket of the Licensing Proceedings in electronic form, and will designate to the LSSA, which and when, any "candidate" official record materials are to be added to the official docket. As users, the Presiding Officers and Secretary will have access equivalent to that of a participant, i.e., no special access/functionality is envisioned.

2.1.3.3 The LSSA, System Administration and Capture Personnel

The LSS Administrator (LSSA) is responsible for the certification of the LSS's contents, for ensuring the administration, operations, and maintenance of the LSS, and for ensuring the LSS is available for access, as required. As a user, the LSSA will have access which includes access equivalent to that of a participant; the LSSA will have additional access to functionality available to the LSS System Administration and Capture personnel, who will be authorized by the LSSA to perform certain LSSA functions.

LSS System Administration personnel will be responsible for establishing and maintaining accounts for all users, and for maintaining system availability, and data integrity. These responsibilities include:

- Ensuring the LSS is on-line available as required,
- Creating and maintaining all user accounts, including:
  - user_id's and passwords,
  - functional and data access definitions, and
  - suspending[6]/terminating accounts,
- Servicing print requests,
- Maintaining authority tables used in the validation of header field values,
- Maintaining protected header field designations which prevent the editing of selected header fields,
- Maintaining the address book used in electronic messaging,
- Reconfiguring capture stations,
- Performing routine system maintenance of hardware,
- Performing collective system maintenance of hardware,
- Performing data backups and recovery, as required,
- Performing installation of hardware, as required, and
- Performing installation of software upgrades, as required.

LSS capture personnel will be responsible for capturing the documentary materials submitted to the LSSA, and capturing the "candidate" and "approved" official record materials. These responsibilities include:

- Importing documentary material submitted by the participants in electronic format, i.e., bibliographic headers, page images, and page texts,
- Validating submitted bibliographic header data against LSS header valid-values lists, known as authority tables
- Creating headers for the documentary materials submitted,
- Updating headers to correct errors, as appropriate,
- Scanning to image, hard-copies which are to become part of the official docket,
- Quality checking scanned page images,
- Re-scanning and inserting page images which fail quality checks,
- Converting images of pages to text,
- Quality checking page texts which were converted from images,
- Correcting and replacing page texts which fail quality checks,
- Identifying documentary materials which are duplicates of existing LSS holdings,
- Deleting documents which are duplicates, or not relevant.

2.1.3.4 The Public The public will be provided access to the LSS via controlled public accounts, whose user_ids and passwords will be controlled by the LSSA's System Administration personnel. Public access to the LSS will only be via dedicated interactive retrieval stations at designated public access locations, as defined in Section 9.0, Table 9-1. The public will access the LSS to:

- Perform field-oriented and full text searches against the headers and/or text of the LSS documentary materials holdings,
- Perform field-oriented and full text searches against the headers and/or text of the official docket,
- Display or print the headers, page image(s), and page text(s), of the documentary materials or official record materials identified by searches, and

- Request paper copies of the headers, page image(s), and page text(s) of documentary materials or official record materials.

The public will not have access to the LSS electronic messaging facilities. The public will not have access to "candidate" official record materials.

2.2 LSS Completion and Turn-over to the NRC

DOE is responsible for the design and development of the LSS. After completion of LSS development and subsequent acceptance testing, DOE will turn the system over to the NRC, which will be responsible for it's administration, operation, and maintenance.

The process and schedule by which the LSS will be developed, acceptance tested, deployed to the sites, populated with data, and "handed off' from the DOE to the NRC will be addressed by MOU's and other agreements between those agencies.

2.3 LSS In Operation

Since the LSS will be delivered with all required functionality, and since the LSSA, System Administration and Capture personnel will have familiarity with the system as a result of acceptance testing, the LSS is expected to go operational soon after the system is turned-over to the NRC.

Certification: The LSSA must complete loading of all participants' submitted documentary materials, and certify DOE's substantial compliance in submitting all of their existing relevant documentary materials at least six months prior to DOE's submission of the License Application.

Docketing of the License Application: After the LSSA has certified the LSS and DOE has submitted the License Application, the NRC will docket DOE's License Application. The NRC will establish a docket number, and publish a hearing notice in the Federal Register.

Availability of Functionality: As previously indicated, the LSS will be delivered with all required functionality. However, the public may not be given access to the images and searchable text of the documentary materials holdings prior to docketing of the License Application, and the official docket will not be initiated until docketing of the License Application. Once the official docket is initiated for that docket number, field-oriented and full text search of the electronic docket's official record materials will be available.

The LSS Database: The LSS database will consist of the documentary materials, the official docket, and the "candidate" official record materials, i.e., electronic fillings, services, and proofs of service which have been transmitted by the participants and captured by the LSSA, but not yet "approved" by the Secretary. The documentary materials will consist of any documentary materials pre-loaded by the DOE, and all participants' documentary materials loaded by NRC Capture personnel. The official docket will consist of the "approved" electronic fillings, services, and proofs of service, and all other official record materials provided by the Secretary and loaded by Capture personnel, e.g., transcripts, depositions, etc.

User Access: Each user will be able to access the LSS via their own personal account, using a user_id and password combination. Each account, will have access to only that functionality and data defined for that account by the LSSA, and established by System Administration personnel.

Loading of Submitted Documents: LSS Capture personnel will load participant submissions, which must comply with LSS import format criteria. The bibliographic header, page images, and text for each item of documentary material will be imported from electronic media. Bibliographic header fields will be imported into the LSS header, and field values will be validated against authority tables. LSS-specific header fields, such as the document indexer's id will be entered by the Capture personnel; other fields, such as "Date/Time Loaded into LSS " should be automatically entered by the system. Page images and texts will be imported, when provided. The LSS header, page images, and text will be quality checked.

Text and header fields which are to be full-text searchable will be spell-checked, corrected, and searchable text created. Each item will then be checked to determine if it is a duplicate, and if not will be committed to the LSS database. The item will then be available for search and retrieval by all users.

Items which cannot be properly indexed, fail quality checking, or are otherwise unacceptable will be included in a Rejection List to be provided to each participant.

Unique ID on Each Item of Documentary Materials: Each item of documentary materials submitted by a participant must have an item_id in the bibliographic header, which is unique to that item from that participant; DOE's unique id is the "accession number". This item-id will not be unique across more than one participants' submissions. Capture personnel will make each item submitted unique across all participants' submissions within the LSS by creating an LSS-unique "accession number" in the LSS header.

Verification of Documentary Materials: Participants are responsible for verifying that all copies of their documentary materials were loaded into the LSS accurately and correctly, and will use the search and retrieval techniques available for document discovery to accomplish this. Participants have a set number of days from their date of submission to verify their data, as-loaded, and notify the LSSA if any errors are detected. Within this timeframe, Capture personnel may edit unprotected LSS header fields to correct errors. If edited, a date of last modification will be automatically entered in the LSS header by the system.

If the LSSA is notified of errors beyond the established timeframe, the participant will have to re-submit the item as a new, separate item. The bibliographic header submitted with the new item will identify all bibliographic header fields which have been revised, within a comments field in the new bibliographic header. The capture personnel will load the new item, and will not delete the original item, but will update it's LSS header to indicate a corrected version exists.

Searching the Documentary Materials: Each user will be able to perform field-oriented and full text searches against the documentary materials holdings of the LSS; however, public accounts are not required to have access to images and full text for searches, until docketing of the License Application[7]. The LSSA may authorize access to and the full text of the documentary materials holdings of the LSS for public accounts prior to docketing.

The search results will first be displayed as a summary list, e.g., a one-line subset of header fields per item identified using the query criteria. The components of any item in the summary list will then be displayable or printable by selecting the associated summary line and the component to be displayed or printed, i.e., the header, page images, or page texts.

In addition, users may submit a request to print an item's header and images. In that event, System Administration personnel will service the request and mail the printed hard-copies to the requester, as soon as possible.

Access to Privileged Documentary Materials: For privileged documentary materials, only bibliographic headers will be submitted. The LSS header will still be accessible to all users.

If a participant's claim of privilege is denied, the participant will re-submit the item as a new item with bibliographic header, page images, and page texts. The capture personnel will load the new item, and will not delete the original header denoting the item as privileged, but will update it to indicate a corrected version exists.

If a participant's claim of privilege is recognized, but the PO orders the item's submission, the LSSA will place the item in a Protective Order File, such as a secure, controlled file cabinet, or a designated stand-alone computer. The capture personnel will create a new LSS header for the submitted item, load the bibliographic header fields submitted for that item, and complete the entry of the LSS header fields, including an indication that it has been placed in such a Protective Order File. The capture personnel will not delete the original LSS header, but will update it to indicate a corrected version exists. The new

item's images and/or text will not be accessible online via an LSS user's account, but may be accessible on-line via a stand-alone computer.

Electronic Messaging: All Participants, the LSSA, the Presiding Officers, and the Secretary will have access to electronic messaging to transmit and receive filings, services, etc., electronically. Proofs of service will be provided for all such servings. All such filings, services, and proofs of service will be marked "candidate" official record materials, until "approved" and designated as "official" by the Secretary. The LSSA will be copied on all such items, and will provide these to Capture personnel for loading as "candidate" official record materials. Capture personnel will create the LSS header for each item. When the Secretary approves "candidate" official record material, and so designates to the LSSA, Capture personnel will update the corresponding LSS header to reflect it as "approved".

Participants may also use the electronic messaging facilities for messages which are not destined to become part of the official docket.

The Official Docket: The official docket for the Licensing Proceedings, i.e., the legal record, will be maintained in electronic form in the LSS. The NRC Secretary will ensure that the electronic docket contains all the official record materials of the licensing proceedings. The official record materials will include the electronic filings, services, and proofs of service "approved" by the Secretary and all other official record materials provided by the Secretary and loaded by Capture personnel, e.g., transcripts, depositions, etc.

Support for Multiple Dockets: If the NRC determines that the issues are too complex/lengthy to be decided by a single licensing board within the allotted time frame, then a second board may be established to hear a subset of the issues, concurrent with the first board. This would be known as a bifurcated hearing. Official record materials will have to be identifiable as to which hearing they are associated, to provide retrievability specific to each hearing, or from both.

In addition, any proceedings resulting from appeals, hearings for licenses subsequent to the construction authorization such as the license to receive and possess waste, etc., will have new, separate and distinct, docket numbers.

Searching the Official Docket: Once the electronic docket has been established, each user will be able to perform field-oriented and full text searches against it. Though not yet part of the official docket, the "candidate" official record materials will also be searchable.

The functionality for displaying and printing the results of queries against the official docket will be the same as for displaying and printing the results of queries against the documentary materials, and the same will be true of print requests.

Remote Access: Users, particularly participants, will want to access the LSS from non-dedicated interactive retrieval stations, such as by dialing-in from computers in their offices, their hotel rooms during the licensing hearing(s), etc., for

- Document discovery,
- Generation, transmission, and reception of electronic messages,
- Review of "candidate" filings, services, and
- Review of the electronic docket.

The LSS will provide dial-in facilities, such as modem pools, for such remote access. For remote access, the LSS will support the full range of capabilities which would otherwise be available to users at LSSA-provided dedicated interactive retrieval stations. However, if large volumes of text, or images in any volume are transferred to these remote locations, performance will be inhibited by the bandwidth utilized, i.e., a 28.8 baud modem may increase performance two-fold over a 14.4 baud modem, but will be extremely slow compared to the dedicated links to the LSSA-provided dedicated interactive retrieval stations. To provide the best possible performance for remote access, any user will be able to "turn-off" and "turn-on" image retrieval and display for their account at any time, regardless of their access

location.

LSS Access from the Hearing Room: During the Licensing Hearing itself (projected to last 90 days, and starting some 24 months after docketing of the License Application), on-line access to the LSS is to be provided in the hearing room to the Presiding Officer, all participants, and to witnesses while testifying. In addition, capture stations will also have to be provided at the hearing site to capture hard-copies designated to become official record materials, such as depositions, document exhibits not in the LSS documentary materials holdings, and the electronic files of the daily transcripts.

Procedural Clocks: The LSS is not required to provide any mechanisms for setting the expiration date for, or for automatically determining the expiration of any timeframe, e.g., number days to respond to a motion filed, number of days to verify submitted materials, etc. All such "clocks" may be procedurally implemented.

3.0 PRIMARY LSS FUNCTIONAL REQUIREMENTS

The primary LSS functional requirements are those directly associated with the purpose of the system: document capture, storage, search and retrieval, electronic message transfer, and official record material functions. Secondary functions, which include system administration and security functions, are described in Sections 4 and 5.

3.1 Document Capture [LSS1-004, LSS1-012, LSS1-013, LSS1-014]

The document capture functions allow the LSSA to import electronic data and capture paper documents to make them part of the documentary or official record file material within the LSS.

LSS2-001

Scan Paper to Image. The LSS shall provide the capability to scan paper documents to create an electronic bit-mapped image, including 8-1/2 x 11 inch single and double-sided pages, and single-sided pages up to E sized. [LSS1-006]

Comment: The image formats supported by the LSS are defined in Section 6.2.4 of this document.

LSS2-001-1

Partial Document Scanning. The LSS shall provide the capability to scan single pages and portions of documents to allow page-level insertion of pages fading quality check without re-scanning the entire document. [LSS1-006]

LSS2-002

Import Electronic Document. The LSS shall provide the capability to import electronic documents which comply with LSS import format and media requirements into the system. Imported documents will be available for quality check as described in LSS2-008. [LSS1-004]

Comment: LSS import format and media requirements are specified in Section 6.2.5 of this document.

LSS2-002-1

Import Image. The LSS shall provide the capability to import electronic images which comply with LSS import format and media requirements into the system. [LSS1-004]

Comment: LSS import format and media requirements are specified in Section 6.2.5 of this document.

LSS2-002-2

Import Text. The LSS shall provide the capability to import electronic text which complies with LSS import format and media requirements into the system. [LSS1-004]

Comment: LSS import format and media requirements are specified in Section 6.2.5 of this document.

LSS2-002-3
Import Electronic Message. The LSS shall provide the capability to import the text of an LSS electronic message into the system. [LSS1-004]

Comment: LSS electronic messages, which include electronic filings of various types, will need to become part of the documentary material and to be searchable like other LSS documents. This requirement assures that the electronic text of the messages can be "captured" as documentary material without printing, scanning and reconverting the material to text. It is not anticipated that this electronic message will be converted to image, since it is fully and accurately represented in electronic text form.

LSS2-002-4
Import Header. The LSS shall provide the capability to import electronic bibliographic headers which comply with LSS import format and media requirements into the system. [LSS1-004]

Comment: LSS import format and media requirements are specified in Section 6.2.1, 6.2.2 and 6.2.5 of this document.

LSS2-003
Create Electronic Header. The LSS shall provide the capability to create an electronic LSS header. [LSS1-012, LSS1-021]

LSS2-003-1
Enter Header Data. The LSS shall provide the capability to create an LSS header. [LSS1-012]

LSS2-003-2
Authority Table Checking. The LSS shall use authority table lists of valid fields to validate data entered by the user into LSS header fields and as a mechanism to allow the user to select valid values for entering data into LSS header fields. [LSS1-021]

LSS2-004
Convert Image to Text. The LSS shall provide the capability to convert a bit-mapped image which is compliant with LSS data format requirements to computer-readable text. The LSS shall achieve text conversion accuracies that are achievable with the best commercial products available at the time of the LSS system design. [LSS1-005]

Comment: The text conversion accuracies may be achieved using combinations of technologies comparable to the best available commercially. LSS data format requirements are specified in Section 6.2 of this document.

LSS2-005
Prepare Text for Search. The LSS shall provide the capability to automatically prepare text and header data for full text search. [LSS1-011]

Comment: This does not refer to the correction of text errors. This is the process that the software uses to prepare corrected text for the search engine. For most full text search applications, which rely on inverted indices for full text search, this requirement refers to building and updating the full text index. It is stated generically so as not to presume the method of search.

LSS2-006

Check for Duplicate Documents. The LSS shall provide the capability to automatically identify apparent duplicate documents in the system or in the document capture pipeline. [LSS1-023]

Comment: The method of duplicate checking might compare LSS header fields (or a subset thereof), full text, or a combination. The requirement refers to "apparent duplicate documents" because it does not assume that the system can guarantee that a document is a duplicate. Rather, the system must provide a tool for identifying likely duplicates. The goal of duplicate checking is to reduce the possibility of duplicate documents in the system and to minimize the cost of processing documents. This requirement does not imply the automatic deletion of apparent duplicates.

LSS2-007

Mark Document as Superseded. The LSS shall provide the capability to mark a document as superseded by another document and identify the successor document. [LSS1-009]

Comment: A document may be superseded by a corrected version of the document. This function allows a document in the LSS to be marked in the document header as having been superseded. This "marking" is used by the Identify Document as Superseded function during retrieval.

LSS2-008

Assure Document Capture Quality. The LSS shall provide the capability to check the quality of a document during the capture process, and to correct errors in the document. [LSS1-06, LSS1-012, LSS1-013, LSS1-021, LSS1-022]

Comment: The capture process ends when the document is available for retrieval by general LSS users. This function and associated subfunctions must be allowed to operate on a separate station from other capture functions so that a separate person can perform the quality checking steps.

LSS2-008-1

Pre-Store Quality Check - Header. The LSS shall provide the capability during the capture process to visually check the completeness and accuracy of the LSS header and to automatically check header fields for valid entries as defined in LSS header authority tables, whether the header was imported or created within the LSS. The LSS shall allow this function to be performed at a separate station from the non-quality check capture functions. [LSS1-012, LSS1 -021]

LSS2-008-2

Pre-Store Quality Check - Image. The LSS shall provide the capability to visually check images for clarity, completeness and skew, whether the images are imported or created within the LSS. The LSS shall allow this function to be performed at a separate station from the non-quality check capture functions. [LSS1-006, LSS1-021]

LSS2-008-3

Pre-Store Quality Check - Text. The LSS shall provide the capability to visually check document text for accuracy by comparing it with the document image, whether the text was imported or created within the LSS. The LSS shall allow this function to be performed at a separate station from the non-quality check capture functions. [LSS1-013, LSS1-021]

LSS2-008-4

Text Spell Check. The LSS shall provide the capability to create and maintain multiple custom dictionaries and to electronically check the spelling of document text against a standard and custom dictionary and to correct misspellings during the capture process. The

LSS shall allow this function to be performed at a separate station from the non-quality check capture functions. [LSS1-013, LSS1-021]

Comment: Spelling errors will be corrected in the text but not in the image as the image is the exact representation of the document.

LSS2-008-5
Rejected Document List. The LSS shall provide the capability to generate a list of documents which have failed any pre-store quality check identifying the reason or reasons for failure. [LSS1-021]

Comment: This function will be used to inform submitters of documents that documents must be resubmitted.

LSS2-008-6
Correct Header Errors (Pre-Store). The LSS shall provide the capability to edit header fields which are not protected, during the capture process, whether the header was imported or created within the LSS. [LSS1-012]

Comment: Some header fields may be protected from update through the Protect Header Field function (Section 5).

LSS2-008-7
Replace Image Pages. The LSS shall provide the capability to replace, insert and delete individual image pages during the capture process, whether the original or replacement images were imported or created within the LSS. [LSS1 -006]

LSS2-008-8
Interactive Text Correction. The LSS shall provide the capability to correct errors in document text during the capture process, whether the text was imported or created within the LSS. [LSS1-021, LSS1-022]

3.2 Document Storage

LSS2-009
Store Document (Link Text, Image, Header). The LSS shall provide the capability to store documentary material, whether imported, captured or created within the LSS, linking the document components (header, text and/or image) for subsequent retrieval. [LSS1-012, LSS1-013, LSS1-014]

Comment: The various forms of documentary material are described in Section 6.

LSS2-009-1
Store Document Header. The LSS shall provide the capability to store an LSS header for subsequent retrieval. [LSS1-012]

LSS2-009-2
Store Document Text. The LSS shall provide the capability to store document text for subsequent retrieval. [LSS1-013]

LSS2-009-3
Store Document Image. The LSS shall provide the capability to store document images for subsequent retrieval. [LSS1-06, LSS1-014]

LSS2-009-4
Link Document Components. The LSS shall provide the capability to logically link the header, text and image of a document, where available, for subsequent retrieval, whether these

document components are stored at the same time or at different times. [LSS1-006, LSS1-012, LSS1-013, LSS1-014]

Comment: The system must allow the storage of a complete header/text/image document all at once, as well as the initial storage of a header, with later storage of the text and/or image. The linkage allows subsequent retrieval of one or more document components (header, text, image) from a list of documents satisfying a query.

LSS2-009-5
Preclude Orphan Image/Text. The LSS shall prevent the storage (for retrieval) of document images or text which are not associated with an LSS header. [LSS1-012, LSS1-013, LSS1-014]

Comments: Documentary material in the LSS must have a header to assure retrievability and data base integrity. "Storage (for retrieval)" means storage in the documentary data base for purposes of retrieval. Temporary storage of text or image during the capture process, outside of the retrieval data base is not prohibited by this requirement.

LSS2-010
Define Information Package. The LSS shall provide the capability to define an information package which includes a listing of all documents in the package. [LSS-004]

3.3 Document Search and Retrieval [LSS1-008, LSS1-011, LSS1-012, LSS1-013]

LSS2-011
Query for Document. The LSS shall provide the capability to query the system for a list of all documents which meet the query criteria and sort the displayed list on the basis of selected displayed fields, or the basis of relevancy to the query. [LSS1-012, LSS1-008]

LSS2-011-1
Query Header. The LSS shall provide the capability to query the system by specifying the content of one or more header fields to obtain a list of all documents which satisfy the query. [LSS1-012, LSS1-008]

LSS2-011-2
Query Text. The LSS shall provide the capability to query the system by specifying one or more character strings in the full text of the document to obtain a list of all documents which satisfy the query. [LSS1-013]

LSS2-011-3
Text Query Parameters. The LSS shall provide the capability to specify single and multiple character wild cards, to utilize proximity searching , and root searching as part of a full text query and to combine multiple query statements using boolean expressions (e.g., AND, OR, NOT). [LSS1-013]

Comment: Only very fundamental fun text options which are available through a wide variety of commercial products have been specified here, in order not to preclude the use of most Commercial Off The Shelf (COTS) products.

LSS2-011-4
Query Header and Text. The LSS shall provide the capability to query the system by specifying a combination of header field values and the text query parameters from LSS2-011-3 in the full text of the document to obtain a list of all documents which satisfy the query. [LSS1-012, LSS1-013]

LSS2-011-5
Save/Reuse Query. The LSS shall provide the capability to save, retrieve, edit and/or

re-execute a previously constructed query, and to perform a query against the results set of the previous query during a single session. [LSS1-012, LSSl-013]

LSS2-011-6
Provide Query Status. The LSS shall provide the user an indication of the query status during a full text query and allow the user to terminate queries in process without terminating the session or losing previous result sets. [LSS1-012, LSS1-013]

Comment: It is always possible to construct a query which is so broad that it results in an unmanageable results list. Users should be able to determine that an ongoing query is too broad and terminate the query in process. Typically, status would be provided by a running total or list of documents found which satisfy the query. Typically, a user would terminate a query if the running total becomes large, and enter a more specific query to reduce the results list size.

LSS2-011-7
Query Assistance. The LSS shall provide interactive capabilities to assist the user m retrieving documents when the field values that uniquely define the documents are not known to the user. [LSS1-020]

Comment. Examples might include synonym processing, thesaurus, natural language queries, or other search aids. Because a variety of approaches are used in the commercial market, no one approach is specified.

LSS2-011-8
Save Query Result Set The LSS shall provide the capability to save, retrieve, and search on a previous query result within a session. [LSS1-012, LSS1-013]

LSS2-012
Display Document. The LSS shall provide the capability to display a document. [LSS1-012, LSS1-013, LSS1-014, LSS1-016]

LSS2-012-1
Display Header. The LSS shall provide the capability to display the LSS header of a document. [LSS1-012]

LSS2-012-2
Display Text. The LSS shall provide the capability to display one or more pages of the text of a document. [LSS1-013]

LSS2-012-3
Locate Search Terms in Document. The LSS shall provide the capability to locate the terms in the document which satisfy a full text query and to move the term indicator from one term to the next or previous term without displaying intermediate text. [LSS1-013]

Comment: This function is performed as the user is viewing the document. It is typically implemented by highlighting the search terms in the document and providing a "go to next term" function which places a cursor at the line or word of the search tem.

LSS2-012-4
Display Image. The LSS shall provide the capability to display the images of a document, page by page, including full page views of the images of 8-1/2 by 11 inch pages up to E size pages. [LSS1-014, LSS1-016]

Comment: The image formats supported by the LSS are defined in Section 6.2.4 of this document.

LSS2-012-5
Image Viewing. The LSS shall provide image viewing capabilities for image enlargement, reduction, scrolling and rotation. [LSS1-014, LSS1-016]

LSS2-012-6
Display Image and Text. The LSS shall provide the capability to concurrently display a page image of a document and its associated text. [LSS1-013, LSS1-029]

LSS2-012-7
Viewing Options. The LSS shall allow the user to view the following combinations: 1) header; 2) image; 3) text; 4) header and text; 5) header and image; and, 6) text and image. [LSS1-012, LSS1-013]

Comment: This requirement is primarily to support dial-in users who may wish to limit the retrieval of images over lower-bandwidth communications lines. The user must be able to look at text and headers without looking at images.

LSS2-012-8
Identify Document as Superseded. The LSS shall provide the capability to identify a document which has been marked as a superseded version. [LSS1-009]

Comment: The Mark document as superseded requirement allows documents to be marked as superseded, meaning that a subsequent version of the document has been put into the LSS. The Identify Document as Superseded function enables users performing document retrieval to see that a document has been marked.

LSS2-013
Print Document. The LSS shall provide the capability to print a document at a local printer. [LSS1-012, LSS1-013, LSS1-014]

LSS2-013-1
Print Header. The LSS shall provide the capability to print a document header at a local printer. [LSS1-012]

LSS2-013-2
Print Text. The LSS shall provide a user selectable capability to print from one page to all of the text of a document, and any selected ranges of pages, at a local printer. [LSS1-013]

LSS2-013-3
Print Standard Image. The LSS shall provide a user selectable capability to print from one to all images, and any selected ranges of images, of 8-1/2 by 11 inch (or smaller) pages of a document, at a local printer, on 8-1/2 by 11 inch paper. [LSS1-014]

LSS2-013-4
Print Oversize Image. The LSS shall provide the capability to print an oversized page image, up to E sized, on a single sheet of paper at 100% of the size of the original image. [LSS1-014]

LSS2-013-5
Print Results List. The LSS shall provide the capability to print some or all of the summary lines of a results list. [LSS1-012, LSS1-013, LSS1-014]

LSS2-013-6
Print Screen. The LSS shall provide the capability of printing the screen display. [LSS1-012, LSS1-013, LSS1-014]

LSS2-014
Request Paper Copy. The LSS shall provide the capability to submit an electronic request for

a paper copy of the header, images or text of a document or of an entire results set, including oversized and color images. [LSS1-017]

Comment: This function is primarily for dial-in users.

LSS2-015
Process Paper Copy Request. The LSS shall provide the capability to receive and read an electronic request for a paper copy of a document and print the requested copy. [LSS1 -017]

Comment: This is not anticipated to be a highly automated function. Automatic address label generation for example is not expected. The LSSA will need to be able to receive requests, and print out the requested document. The rest of this function may be procedurally implemented.

3.4 Electronic Message Transfer [LSS1-003]

LSS2-016
Create Electronic Message. The LSS shall provide the capability to create an electronic message. [LSS1-003]

Comment. The format of LSS electronic messages is described in Section 6.

LSS2-016-1
Delete Electronic Message. The LSS shall provide the capability for an authorized user to delete an electronic message. [LSS1-003]

LSS2-017
Store, Electronic Message. The LSS shall provide the capability to store an electronic message including messages which have been created or edited but not sent, sent messages, and received messages. [LSS1-003]

LSS2-018
Edit Electronic Message. The LSS shall provide the capability to edit an electronic message which has been previously stored, prior to sending. [LSS1-003]

LSS2-019
Electronic Message Import/Export. The LSS shall provide the capability to import ASCII text into an electronic message during editing, and export ASCII text from an electronic message. [LSS1-003]

Comments: This requirement allows users to use most commercial word processors for text generation and to transfer text to and from the LSS electronic message environment. Translation of specific vendor formats (non-ASCII) is not specified since these formats change over time.

LSS2-020
Address Electronic Message. The LSS shall provide the capability to address an electronic message to one or more authorized LSS users by creating an address list of individual user and/or user group names. The LSS shall provide a list of valid address names for the user to select from in order to address an electronic message. [LSS1-003]

LSS2-021
Send Electronic Message. The LSS shall provide the capability to electronically transmit an electronic message to users in the address list. [LSS1-003]

LSS2-022
Display Electronic Message. The LSS shall provide the capability to receive and display an electronic message which was sent to the user's electronic message address. [LSS1-003]

LSS2-023

Acknowledge Message Delivery. The LSS shall provide electronic acknowledgment of message delivery which identifies the recipients electronic message name/address, and the date and time of delivery. [LSS1-024]

Comment: Message delivery means that the message is available for the recipient to read.

LSS2-024

Report Message Delivery Failure. The LSS shall provide a notice to the sender of an electronic message indicating when the system has failed to deliver the message, which identifies the intended recipient's electronic message name/address, and the date and time that the message was sent or the failure detected. [LSS1-003]

LSS2-025

Print Electronic Message. The LSS shall provide the capability to print an electronic message, including messages which have been created or edited but not sent, sent messages, and received messages. [LSS1-003]

3.5 Official Record Material

The following requirements pertain to the "Official Record File" which is discussed in 10 CFR 2.1013(a)(2). This is effectively an electronic docket containing the official record of the proceedings. The official record file will be maintained by the NRC Secretary's organization (SECY); the LSS will contain a copy of the official record file. The phrase "official record material" (not "file") is used in this document in order to avoid the implication of a design. It is likely that the official record material will be cataloged stored and viewed just like documentary material, but with special header flags to indicate that it is either candidate or approved official record material.

LSS2-026

Designate Official Record Material. The LSS shall provide the capability to designate material in the LSS as being Official Record Material. [LSS1-004]

Comment: As interpreted, this requirement does not mean that the official record material must be located in a physical file, but must be logically identified as being in the official record. This requirement assumes that information designated as official record can be represented in the same text and image formats as documentary material. The identification of material as official record material is a system function, however, the determination of material as official record material is made by the NRC Secretary's organization (SECY).

LSS2-027

Retrieve Official Record Material. The LSS shall provide the capability to retrieve, view and print official record material in the same manner as documentary material. [LSS1-004]

LSS2-028

Import Transcripts. The LSS shall provide the capability to import transcripts which are compliant with LSS import and media format requirements directly into the LSS, via a capture station, for inclusion in the official record material. [LSS1-026]

Comment: LSS import format and media requirements are specified in Section 6 of this document.

4.0 SYSTEM ADMINISTRATION REQUIREMENTS

4.1 System Administration

LSS2-029
Start Up System. The LSS shall provide the capability to initialize the software and hardware necessary to operate the LSS. [LSS1-018]

LSS2-030
Shut Down System. The LSS shall provide the capability for the orderly shut down of the software and hardware components of the LSS. [LSS1-018]

Comment. This function would be used, for example, for preventative maintenance.

LSS2-031
Backup Data. The LSS shall provide the capability to create incremental and full backup copies of all data on the system. [LSS1-018]

Incremental backups mean partial data base backups based on a time span, usually daily. Full backups mean backups of the entire data base .

LSS2-032
Restore Data. The LSS shall provide the capability to restore data created by the backup function to the operational system, including partial and full data recovery. [LSS1 -018]

LSS2-033
Monitor System Status. The LSS shall provide authorized users the capability to monitor the status of system hardware, software, and communication components and to interrupt, restrict or disable system capabilities in order to optimize use of system resources. [LSS1-018]

LSS2-033-1
Monitor Session Activity. The LSS shall provide a capability for an authorized user to monitor user session activity levels and to identify and cancel queries or other system activities. [LSS1-018]

LSS2-034
Data Base Administration Tools. The LSS shall provide authorized users the capability to assess the availability, integrity and performance of the data bases associated with the LSS, including those pertaining to the storage of document headers, text and image data and adjust data base performance parameters or to restrict or disable database features in order to optimize system performance. The LSS shall provide mechanisms to aggregate, compile, and submit data to analysis, and then generate the outcome of a statistical analysis [LSS1-018]

LSS2-035
Store Non-Document-Related Items. The LSS shall provide the capability to store non-document-related items, files, or tables that are related to system administration and database administration activities. [LSS1-018]

Comment: This requirement is likely to be met by providing the Administrator access to the operating system and underlying DBMS of the LSS.

LSS2-036
Retrieve Non-Document-Related Items. The LSS shall provide the capability to search and retrieve non-document-related items, files, or tables that are related to system administration and database administration activities. [LSS1-018]

LSS-037
Delete Non-Document-Related Items. The LSS shall provide the capability to delete non-document-related items, files, and tables that may have been connected during the course

of data base and system administration activities. [LSS1-018]

LSS2-038
Administer Address Book. The LSS shall provide the capability to add, delete and edit addresses used for sending electronic messages, including the user names and user group names. [LSS1-003]

LSS2-039
System Logins. The LSS shall have the capability to account for user activity. [LSS1-018]

4.2 End-User System Access

LSS2-040
Log-On LSS. The LSS shall provide the capability to initiate a user session and gain access to the LSS system by providing an authorized user account name and associated authorized password. The LSS shall not allow access to system functions without the initial entry of an authorized account name and associated authorized password. [LSS1-019]

LSS2-041
Log-Off LSS. The LSS shall provide the capability to terminate a working session on the LSS, leaving the station in a state where a new system logon is required to gain access to LSS functions. [LSS1-019]

LSS2-042
Change Personal Password. The LSS shall provide a non-public user the capability to change the user's authorized password provided that the user has logged onto the system with an authorized password. [LSS1 -019]

Comment: This requirement means that non-public LSS users can change their password, but that users accessing the system through a public reading room will not be allowed to change the password of the account they are using.

5.0 SECURITY AND DATA INTEGRITY REQUIREMENTS

5.1 System Security Administration

LSS2-043
Create/Modify User Account. The LSS shall provide the capability to create new user accounts, modify user accounts, and delete user accounts, including the establishment of the account names and initialization of the account password. [LSS1-019]

LSS2-044
Set Functional Access Authorizations. The LSS shall provide the capability to establish and modify user access authorizations to system functions. At a minimum, the LSS shall provide discreet function-to-user access controls sufficient to enforce the allocations shown in Table 9-2. [LSS1-019]

Comment: Not all LSS users can have access to all LSS functions. The referenced table defines categories of users and identifies the functions needed by each category.

LSS2-045
Set Data Access Authorizations. The LSS shall provide the capability to establish and deny read, write and delete privileges for each of the following types of information on a per-user account basis:

- Documentary material
- Official record material (approved)
- Official record material (candidate)
- Header data
- Text data
- Password
- Image data
  [LSS1-019]

LSS2-046

Set Header Field Protection. The LSS shall provide the capability to designate specified fields in the LSS header as protected from or available for update. [LSS1-019]

Comment: This function would allow the LSSA to prevent update of specific fields in the LSS header. This restriction would apply to all headers stored in the system as well as headers which have been imported and are being processed by the capture functions. It is anticipated that certain fields, such as the unique identifier of the document (e.g. accession number) will be considered unalterable. Electronically submitted documents which have these fields in error would be rejected rather than connected within the LSS.

LSS2-047

Edit Documents. The LSS shall provide the capability to edit previously stored documents. [LSS1-021]

Comment: Previously stored means that the document is stored in the LSS and is available for retrieval. This function will be available only to the system administration personnel for purposes of maintaining data base integrity and accuracy. It is anticipated that edits of documents will be noted in a header field such that users will be alerted.

LSS2-047-1

Edit Header Fields (Post-Store). The LSS shall provide the capability to edit header fields of previously stored documents provided that the fields are not protected. [LSS1-021]

Comment: Some header fields may be protected from update through the Protect Header Field function.

LSS2-047-2

Replace Image Pages - Post-Store. The LSS shall provide the capability to replace individual images and insert individual missing images in documents which have been previously stored. [LSS1-006]

LSS2-047-3

Interactive Text Correction - Post-Store. The LSS shall provide the capability to correct errors m document text winch has been previously stored. [LSS1-021]

LSS2-047-4

Document Deletion. The LSS shall provide the capability to logically delete documents (header, text and/or image) such that they will not be available to LSS users. This function shall require confirmation prior to execution. The LSS shall prevent the deletion of a header before the associated text or image have been deleted. [LSS1-018]

Comment: This function will be available only to the system administration personnel for purposes of maintaining data base integrity and accuracy. Deletion means that the document is no longer available for retrieval and viewing using normal system functions. This requirement does not preclude the use of Write Once Read Many (WORM) media. It is anticipated that logs will be maintained of all documents that have been deleted.

LSS2-047.5
Undelete. The LSS shall provide the capability to make a list of documents that have been logically deleted; to restore a document that has been logically deleted and to make it available to users. [LSS1-018]

5.2 System Security Enforcement

LSS2-048
Enforce Functional Access Authorizations. The LSS shall prohibit user access to functions which the user has not been authorized to use through the "Set Functional Access Authorizations" function. [LSS1-019]

LSS2-049
Enforce Data Access Authorizations. The LSS shall prohibit user access to data which the user has not been authorized to access through the "Set Data Access Authorizations" function. [LSS1-019]

LSS2-050
Enforce Header Field Protections. The LSS shall prohibit the editing. of header fields designated as protected by the Protect Header Field function, except for headers which are being created for the first time within the LSS. [LSS1-018, LSS1-019]

6.0 LSS DATA REQUIREMENTS

In order to provide the functions described in Sections 3, 4 and 5, the LSS must support certain key data elements. These elements are described in Section 6. 1. Specific data element formats are defined in Section 6.2.

6.1 Key Data Elements

6.1.1 Documentary Material

LSS2-051
Documentary Material. The LSS shall be capable of receiving, processing and storing documentary material of the types described in Table 6-1. [LSS1-007, LSS1-012, LSS1-013, LSS1-014, LSS1-028]

6.1.2 Electronic Messages

LSS2-052
Electronic Messages. LSS electronic messages shall be free text format. [LSS1-003]

Comment: The fire text format requirement is meant to clarify that the electronic messages, which might include such types as orders, decisions, motions, issuances, and miscellaneous filings, do not require unique message formats by message type. This does not preclude the LSSA from procedurally establishing message format conventions.

6.1.3 Authority Tables

LSS2-053
Authority Tables. The LSS shall have an editable table or tables of valid field values for the LSS Header and any other header information in the system beyond that specified in this document. [LSS1-019]

6.2 Data Formats

6.2.1 Header Fields for Documentary Material

LSS2-054

Document Header Fields. The LSS header shall, at a minimum, include the fields and formats defined in Table 6-2. [LSS1-012, LSS1-027]

Comment: The LSS header was defined by a working group under the LSSARP and is designed to allow users to identify and track evidentiary materials m the documentary database winch may be used multiple times as exhibits in depositions and which are introduced as hearing exhibits.

Users must be able to view the images of documents, which have been referenced as exhibits, while in a deposition or hearing transcript text file. Users must be able to identify, while viewing header records, which deposition or hearing transcripts have referenced the document being viewed.

6.2.2 Header Fields for Official Record Material

LSS2-055

Official Record Material Header Fields. The Official Record Material shall, at a minimum, be described using applicable LSS documentary material header fields (Table 6-2) plus the following descriptors:

- Docket number
- Record material
- Status ("candidate" or "approved" official record material) [LSS1-004]

Comment: This requirement is not intended to dictate the exact name of these descriptors, nor to mandate that they be physically distinct from the documentary material header fields. Docket number is necessary because the LSS may support multiple dockets. Record material types include (for example) transcripts, exhibits, and motions. Status is required because material may be entered into the system prior to formal approval as official record material.

6.2.3 Text Format

LSS2-056

Text Format. The text representation of material in the LSS shall be page delimited ASCII text. [LSS1-013]

6.2.4 Image Formats

LSS2-057

Image format. The electronic image of documentary material in the LSS shall use TIFF Group 4 format for bitonal images and JPEG format for color and grey scale images. These formats are part of the Aldus Tagged Image File Format version 6.0 representation. [LSS1-006, LSS1-014]

Comment: The Aldus Tagged Image File Format is an industry standard developed and put into the public domain by Aldus.

LSS2-058

Image Types. The LSS shall capture, import, process and display bilevel (bitonal), grey-level, and color images of documentary material. The grey-level representation shall allow up to 256 shades of grey. [LSS1-014]

LSS2-059

Image resolution. The electronic image representation of documentary material in the LSS shall be stored at the following minimum resolutions:

Bilevel (bitonal) images 300 DPI (1 bit representation)
Grey-level images 150 DPI (8 bit representation)
Color 150 DPI (24 bit representation)
[LSS1-006, LSS1-014]

LSS2-060

Image compression. Compression of electronic images shall use CCITT Group 4 compression for bilevel images, and JPEG for grey-scale images. The JPEG compression ratio shall be selected such that an image can be printed at the original size without any degradation detectable by the unaided eye. [LSS1-014]

6.2.5 Import Formats

LSS2-061

Import Formats. The LSS shall be designed to accept data for import on MPC-2 compliant CD-R and through electronic transfer. The physical recording format on the CD-R medium shall adhere to industry standards, including:

IS010149 - "Information Data Interchange on Read-Only 120 mm Optical Data Disk" (1989),

ISO 9960 - "Information Processing - Volume and File Structure of CD-ROM for Information Exchange" (1990),

ECMA 168 - "Volume and File Structure for Read-Only and Write Once Optical Disk Media for Information Exchange" (1992).
[LSS1-004]

Comment: The logical format of the data on the CD-R medium or electronic transfer package will be defined by DOE during the LSS design. Additional formats should be anticipated.

7.0 LSS PERFORMANCE AND CAPACITY REQUIREMENTS

LSS2-062

Storage, and Retrieval Capacity. The LSS shall provide an expandable storage capacity capable of storing for retrieval document volumes identified in Appendix B. The storage media shall be capable of supporting access times specified in Table 7-1 for the volumes specified in Appendix B. [LSS1-003, LSS1-012, LSS1-013, LSS1-014, LSS1-015]

Comment:

This volume requirement is based on the following assumptions:

The anticipated maximum documentary material page count is approximately 30 million, of which:

28.4 million are letter size pages (captured as bilevel)
1.5 million are E-size pages (captured as bilevel)
0.1 million are E-size pages (captured as grey-scale)

Each letter size page is assumed to contain 2500 characters.

Each Header Record consist of 2000 characters and one is created for every 13 pages (the presumed average document size) entered into the system.

It is not anticipated that the full storage capacity of the LSS will be procured at one time. However for the system to meet this requirement, the design must demonstrate that storage and access components sufficient to accommodate this capacity can be incrementally added without system redesign. Ability to satisfy this requirement should be demonstrated though some combination of engineering analysis, demonstrated expansion capability, and/or comparison with existing systems of like design.

LSS2-063

Backup Storage Capacity. The LSS shall provide the capability of storing and maintaining backups consistent with requirements LSS2-031 and LSS2-032. [LSS1-018]

LSS2-064

Concurrent Users. The LSS shall support up to 150 concurrent users. [LSS1-012, LSS1-013, LSS1-014, LSS1-015]

Comment: Concurrent users means users who are exercising normal system functions during the same time period. Testing would normally be done by having testers implement testing scenarios defining normal system use.

LSS2-065

Timing Strings. The LSS shall meet the average response times shown in Table 7-1. The performance shall be achieved with 15 concurrent search and retrieval users active on the system. [LSS1-018]

Comment: Performance measurements shall measure the time from the "execute command" key stroke (following any required data entry), to the time that the requested data or system response first appears on the screen. Time required for the end user to place removable media into the system, if required, will not be counted in retrieval times.

The performance indicated will be achievable at the Main Facility and at the Supported Sites as indicated. These requirements apply only to components under the control of the LSSA. They do not apply to dial-in users or any sites not listed in Table 9-1.

LSS2-065-1

Performance Monitoring. The LSS shall provide performance monitoring software needed to verify compliance with response times shown in Table 7-1. [LSS1-018]

8.0 LSS RELIABILITY, AVAILABILITY AND MAINTAINABILITY REQUIREMENTS

LSS users will access the system from the Eastern to the Pacific time zones during normal working hours, with some after hours usage. During the hearing phase there is expected to be an increase in after-hours usage, especially in electronic messaging and importing of official record materials.

One of the key benefits of the LSS is that it reduces the time allotted for transmission of materials:

> "Whenever a party, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, 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." [10 CFR 2.1017]

In order to avoid delays in the licensing process the LSS must be reliable and available for users who

access it for message transmission and document discovery. Since reliability and availability necessarily require planned preventative maintenance and quick-response for unplanned maintenance, the LSS also must also be designed to be maintainable. The following requirements address these goals:

LSS2-066

Reconfigurable Capture Stations. The LSS shall provide reconfigurable hardware and software allocation for stations used in the capture process. Movement of functions from one station to another shall be achievable in 30 minutes or less. [LSS1-018]

Comment: This requirement means that capture functions can be moved from one station to another should a hardware failure occur on the first station. It is not required that all hardware be redundant in the system provided that the availability requirements are met.

LSS2-067

Maintainability. All LSS workstations, servers, storage devices, on-site communications, power and environmental control equipment shall be serviceable on-site within four hours of parts availability for component level failures. [LSS1-018]

Comment: This document does not address the contractual mechanisms or requirements on service contractors such as parts availability and service personnel response time. This requirement pertains to the system design, and means that no components should be used in the system which cannot be serviced on-site during a four hour period when parts and service personnel are available. The intent of this requirement is that, given a normal service contract, any component level failures of the LSS can be readily repaired on-site. "Component-level failures" mean failures that require the replacement of one or a few components of hardware, as opposed to the catastrophic failure of all components (due to fire, for example.)

LSS2-068

Equipment Access. All stationary hardware shall have a minimum of three feet of free access space for all equipment access panels, or more space if required to open the panels completely. [LSS1-018]

Comment: Stationary hardware refers to large processors, storage devices, air conditioning units, etc. which are not normally moved or cannot be easily moved by one person to provide access. Desktop PC's, monitors and equipment of similar size are not considered stationary hardware.

LSS2-069

Availability. The functions of the LSS, other than those which require hardware outside of the LSS (e.g. dial-in access) shall meet minimum specified availability requirements using the following definitions:

Availability. Refers to availability of all sites listed in Table 9-1.

Normal Enterprise Hours: The time span which includes 8 a.m. to 5 p.m. Eastern time, Md 8 a.m. to 5 p.m. Pacific time, in other words, 8 a.m. - 8 p.m. Eastern time, 5 am. - 5 p.m. Pacific time, seven days a week.

Normal Site Hours: The time span which includes 8 am. to 5 p.m. at a given site, seven days a week.

Extended hours: Normal hours plus three hours prior and three hours after normal hours. Extended Enterprise Hours include 5 a.m. to 1 1 p.m. Eastern time, and 2 a.m. to 8 p.m. Pacific time. Extended Site Hours include 5 am. to 8 p.m. at a given site, seven days a week.

Sustained operations: continuous operations for days specified. For example, sustained operations five days a week would imply continual operation five days a week, 52 weeks a year. For acceptance test purposes, sustained operations would imply continual operations throughout the

specified test period.

Comment: This document does not address the actual operational hours of the LSS which will be determined by the LSSA and the operations contracts let for the system. It pertains only to the capability of the system, as designed and implemented, to support these minimum availability requirements. Presumably, these system availability requirements will be demonstrated during system acceptance over a defined period of time. The actual system availability during operations is a function of operational hours set by the LSSA, the performance of the operating contractors, as well as the system design and implementation.

Planned maintenance backup time. A time period during which nightly backups and planned maintenance can be performed.

[LSS1-018, LSS1-025]

LSS2-069-1
Electronic Message Availability. The Electronic Message Transfer functions shall be capable of sustained operation at 90% availability during Extended Enterprise Hours. [LSS1-018]

Comment: This requirement accommodates a six hour planned maintenance/backup time to assure long term system availability and data protection, while supporting extended hours of user access. Electronic Message Transfer is expected to be heavily used during extended hours during the hearing phase.

LSS2-069-2
Capture/Storage Availability. The Document capture and storage functions shall be capable of sustained operation at 90% availability during Extended Site Hours. [LSS1-018]

LSS2-069-3
Search/Retrieval Availability. The Document Search and Retrieval functions shall be capable of sustained operation at 90% availability during Extended Site Hours. [LSS1-018]

9.0 LSS FACILITIES, EQUIPMENT AND COMMUNICATIONS

9.1 LSS Sites and Their Respective Functions

LSS2-070
LSS Location. The LSS functions shall be available at multiple locations in accordance with Tables 9-1 and 9-2. [LSS1-010]

Comment: Table 9-1 maps LSS user types to LSS locations. Table 9-2 shows which LSS functions are allocated to each user type. Note that some individuals will be assigned the functions of multiple user types.

Figure 9-1 shows the location of the LSS facilities.

9.2 LSS Retrieval Equipment

LSS2-071
Retrieval Equipment. The LSS shall allow the addition of equipment to accommodate increased numbers of query and retrieval users up to the maximums shown in Table 9-3. [LSS1-018]

9.3 Communications

The communications connectivity between the LSS sites is not specified in this document. It is assumed

that communications lines between the main facility and the sites listed in Table 9-1 will be sized to meet the functional and performance requirements of the LSS. All communications equipment and lines necessary to meet the functional and performance requirements of this specification are considered part of the LSS system. Communication lines used by dial-in users are not considered part of the LSS system.

10.0 SYSTEM ARCHITECTURE AND DESIGN

The following paragraphs describe additional desired characteristics of the LSS design. Evaluation of compliance may require subjective judgement or involve cost/benefit tradeoffs. However solutions with a high degree of compliance with these requirements would be considered technically superior to other potential LSS solutions.

LSS2-072

Modular Design. The LSS shall be designed using modular design techniques and well documented software interfaces. As a goal, it will allow new software components to be integrated into the system without seriously impacting other software components. In particular the LSS software for conversion of image to text will be replaceable without redesign of the other system components. [LSS1-001]

Comment: The LSS may exist for tens of years. The system will have to be modified as necessary to reflect changing technology and requirements over that time period.

LSS2-073

Government/Industry Standards. The LSS shall use established government and/or industry hardware and software standards where practical. [LSS1-002]

LSS2-074

User Interface. The LSS user interface shall employ graphical user interface techniques which are commonly used in modem commercial software. All user interface screens within major user functions, (such as capture, retrieval, and system administration) will provide consistent presentations of user selectable functions, system messages, menus, on-line help and data presentation. [LSS1-022]

LSS2-075

Move Hardware/Software. The LSS shall provide the capability to reconfigure software functions to similar hardware components within the system to provide flexibility in work flow and maximize system availability. [LSS1-018)

LSS2-076

Modifiable User Interface. The LSS shall be designed to allow rapid changes in user interface to accommodate user preferences discovered during system pre-operational testing and during system operation. [LSS-001, LSS-022]

LSS2-077

Modifiable Header Definition. The LSS shall be designed to allow the addition and augmentation of documentary and official record fields and the linking of header fields with external data bases. [LSS1-018]

Comment: The LSSA may need to augment header information with additional field information to characterize, identify, or track materials. The definition of these augmentation fields is not currently known.

LSS2-078

The LSS shall provide capabilities which support on-line documentation as part of an on-line help

capability. [LSS1-018]

Footnotes

[1] Licensing Support System Phase I Functional Requirements, Draft, February 28, 1995, TRW Environmental Safety Systems Inc.

[2] Licensing Support System System-Level Requirements Document, November 20, 1990, SAIC.

[3] Evaluation of Licensing Support System Options, January 16, 1996, TRW Environmental Safety Systems Inc., Section 3.4.

[4] Documentary materials refer to more than just documents. A bibliographic header must be submitted for each document, item of graphic-oriented material, and other items. An image must be submitted only when the material is suitable for imaging. ASCII text must be submitted only when the material is suitable for conversion to text.

[5] "Participants" is meant to be all-encompassing and includes any party, potential party, etc., which is granted LSS access other than "public".

[6] See 10CFR2 Subpart J Sec. 2.1012

[7] See 10CFR2 Subpart J Sec. 2.1007

[8] These queries were selected as representative of typical user queries which are not overly simple or complex. INFD-T3-Q1: Find documents where text includes phrase like 'repository' & 'seal' or text includes phrase like 'shaft' & 'seal' or text includes phrase like 'borehole'and'seal', order by document id. TEJA-T3-Q2: Find documents where text includes phrase like 'faults' & 'Basin and Range Province' or text includes phrase like 'faults' & 'Nevada' or text includes phrase like 'faults' & Yucca Mountain' order by document id.

GLOSSARY

Bibliographic Header
Subset of the LSS header which is submitted by parties with their documentary material.

Bit-Mapped Image
Electronic representation of an image by individual pixels, or points of light, dark or color, arranged in row and column order.

Character String
One or more sequential alphanumeric characters or spaces.

Custom Dictionary
Specially constructed dictionary capturing technical and other specialized terms.

CCITT
Comite Consultatif Internationale de Telegraphique et Telephonique.

Document
Any unit of documentary material. Document boundaries (the beginning and end of a document, when part of a larger body of material) are defined by the submitter.

Duplicate Document
A document which is duplicative with another document in the LSS in that the two documents were captured or copied from the same original document, and do not differ in terms of the document contents or marginalia. Note that the capture or import of a duplicate document may not result in identical electronic files due to slight differences in the scanning or text conversion process.

E Sized

34 by 44 inches

JPEG
Joint Photographic Experts Group

LSS Header
As used in this document, LSS header refers to the fields which profile the documentary material in the LSS as well as any fields used to profile the official record materials.

Official Record
Equivalent to the official docket. Referred to in the LSS rule, 10CFR (2.1013) as the "official record file."

Official Record Materials
Materials designated as part of the official docket of the license proceedings and placed in the LSS as such. They include all documents which are considered by the Presiding Officer and, if there is an appeal or request for discretionary review, by the Commission.

Page
A physical single-sided page of a document, or the image or text resulting from the capture of a physical page.

Proximity Search
A text search where an occurrence of one string must occur within a specified proximity to an occupance of another string.

Results List
A list of documents which satisfy a query. The documents are typically identified by one or more fields from the header, such as title, date and version number.

Root Search
A text search which looks for matches with the specified text string as well as matches with the root word of the text string.

Session
The period from the time a user logs onto the system to the time the user logs off the system.

Standard Dictionary
Commonly used used authority on spelling.

Superseded Document
A document which no longer represents the latest official version of a document in that it has been formally superseded by a subsequent version, or rendered invalid due to the introduction of other documents into the data base.

Tagged Image File Format
Wildcard Search Text search in which a special character in the search criteria represents any single or multiple ASCII character. Usually, one special character is used to represent a single character wildcard, and a separate character is used to represent I to many letter wildcards.

APPENDIX A: PHASE 1 LSS REQUIREMENTS

LSS1-001
LSS components shall be integrated using modular design techniques and well-documented interfaces which allow new components to be integrated into the system without seriously

impacting other components.

LSS1-002
The LSS shall adhere to established government and/or industry hardware and software standards. to the extent feasible.

LSS1-003
The LSS shall provide an electronic information exchange function to facilitate communications between authorized users. This function shall allow users to transmit and receive electronic documents (e.g. motions, flags, orders, decisions, etc.). Each user shall have a corresponding electronic message center to receiver and store electronic correspondences.

LSS1-004
The LSS shall be capable of accepting electronically formatted documentary materials. Within the LSS there must be a concept of a records package and the records package grouping must be logically accessible.

LSS1-005
The LSS shall provide the capability to recognize characters from the digital image of a document and convert these characters into a standard text representation of the document. This optical character recognition function shall achieve character recognition accuracies that are achievable with the best commercial products available at the time of the LSS system design.

LSS1-006
The LSS shall have the capability to create a digital image of each page of a document.

LSS1-007
Documentary material not suitable for imaging and conversion to a standard text file shall be identified with a header that includes a reference to the storage location of the material. This reference shall be descriptive enough for users to identify the location of the material and how to access the material.

LSS1-008
The LSS shall include a function that allows document submitters to verify that document information entered into the LSS data base is identical to the document information submitted to the LSS Administrator.

LSS1-009
The LSS shall provide a function to allow all users to detect that subsequent revisions to a document exist.

LSS1-010
The LSS shall be accessible from the following locations as a minimum:

- DOE Headquarters, Washington DC
- DOE Project Office, Las Vegas NV
- NRC Headquarters, White Flint, MD
- NRC Region I Office, King of Prussia, PA
- NRC Region 2 Office, Atlanta, GA
- NRC Region 3 Office, Glenn Ellyn, IL
- NRC Region 4 Office, Arlington, TX
- Las Vegas, NV
- Reno, NV
- Carson City, NV
- Nye County, NV
- Lincoln County, NV
- Esmeraldo Count, NV
- Clarke County, NV

- White Pine County, NV
- Eureka County, NV
- Mineral County, NV
- Churchill County, NV
- Lander County, NV
- Inyo County, CA
- National Congress of American Indians, Oneida, WI

LSS1-011
The LSS shall provide one of two search and retrieval modes for public access depending upon whether a notice of hearing on the high-level waste license application has been issued:
Prior to Notice - Full-text search of each field in the bibliographic headers and retrieval of the header and associated image.

After Notice is Issued - same as above plus full-text search of the standard text files.

Given concurrence of the LSS Advisory Review Panel, the latter search mode can be provided prior to the hearing notice.

LSS1-012
The LSS shall be capable of electronically storing and retrieving the bibliographic headers in the system.

LSS1-013
The LSS shall be capable of electronically storing and retrieving document text.

LSS1-014
The LSS shall be capable of electronically storing and retrieving the digital image associated with each page in a document.

LSS1-015
Potential parties, interested governmental parties, and parties who access the LSS from locations other than those listed in requirement [LSS I -0 IO] and those specified by the Administrator shall be provided full text search capability through dial-up access at the requester's expense.

LSS1-016
Potential parties, interested governmental parties, and parties who access the LSS from locations other than those listed in requirement [LSS1-010] and those specified by the Administrator shall be provided access to images at the requester's expense.

LSS1-017
Potential parties, interested governmental parties, and parties who access the LSS from locations in addition to those listed in requirement [LSS1-010) shall be capable of electronically requesting a paper copy of a document at the time of search.

LSS1-018
The system shall provide the LSS Administrator with the necessary tools to ensure LSS availability and the integrity of the LSS data base.

LSS1-019
The system shall provide the LSS Administrator with the necessary tools to ensure the security of the LSS. The electronic information exchange function shall provide password protection for all documents transmitted electronically.

LSS1-020
The LSS shall provide tools to assist the user in retrieving documents when the unique identifiers for the documents are not known to the users. Examples might include synonym processing,

thesaurus, natural language queries, or other search aids.

LSS1-021
The LSS must have capture functionality and the capability to validate material submitted in required electronic form.

LSS1-022
The LSS shall provide a user interface that is consistent with the acceptable user interfaces available at the time of the LSS design.

LSS1-023
The LSS shall have a function that assists the LSS Administrator in identifying duplicate documents.

LSS1-024
The electronic information exchange function shall provide for an electronic acknowledgment that mail has been delivered to the recipient's electronic message center. The acknowledgment shall include as a minimum, the name and address of the recipient and the date the electronic mail was delivered.

LSS1-025
System Definition - - The totality of hardware, software, communications, data processes and procedures dedicated to providing document intake, storage, searching, retrieving, and delivery to the users of the headers, text and images as detailed in the mission statements found in 10 CFR 2, Subpart J.

LSS1-026
The system shall be able to load transcripts from proceedings and transcripts from depositions.

LSS1-027
The LSS will include the capability to catalog records packages and link the bibliographic headers for the records package and the bibliographic headers for the components of the package.

LSS1-028
The LSS must accommodate a protective order file, the access to which is provided only under authorization by the presiding officer.

LSS1-029
The LSS must be able to provide a mechanism that will allow retrieval and display of pages of text with the associated images.

APPENDIX B: ESTIMATED LSS DATA VOLUMES

Year	OCRWM Pages/Year	OCRWM Cumulative	NRC Pages/Year	NRC Cumulative	Others Pages/Year	Others Cumulative	Total Pages Added Yearly	90 Cu
1994	580 k	6,905 k	59 k	550 k	18 k	18 k	657 k	6,78
1995	750 k	7,655 k	59 k	654 k	23 k	41 k	832 k	7,58
1996	1,351 k	9,005 k	65 k	760 k	42 k	82 k	1,457 k	8,94
1997	1,682 k	10,687 k	71 k	891 k	52 k	134 k	1,804 k	10,6
1998	1,970 k	12,657 k	78 k	1,046 k	61 k	195 k	2,109 k	12,6
1999	2,013 k	14,670 k	86 k	1,203 k	62 k	257 k	2,161 k	14,6
2000	2,276 k	16,946 k	95 k	1,381 k	70 k	327 k	2,440 k	16,9
2001	2,371 k	19,317 k	104 k	1,567 k	73 k	400 k	2,548 k	19,3
2002	1,628 k	20,945 k	114 k	1,694 k	50 k	450 k	1,793 k	20,9
2003	1,584 k	22,529 k	126 k	1,818 k	49 k	498 k	1,759 k	22,5
2004	1,756 k	24,285 k	139 k	1,956 k	54 k	552 k	1,949 k	24,3
2005	1,708 k	25,993 k	152 k	2,089 k	53 k	605 k	1,913 k	26,0
2006	1,514 k	27,506 k	168 k	2,208 k	47 k	652 k	1,728 k	27,6
2007	1,674 k	29,181 k	184 k	2,339 k	52 k	703 k	1,910 k	29,3
2008	1,756 k	30,937 k	203 k	2,476 k	54 k	757 k	2,013 k	31,0
2009	1,247 k	32,184 k	223 k	2,574 k	38 k	795 k	1,509 k	32,3
2010	1,124 k	33,308 k	245 k	2,662 k	35 k	830 k	1,404 k	33,4

APPENDIX C: LSS FIELD DESCRIPTIONS

Abstract
A brief narrative description of the subject content of the document, or a full description of the contents of a document that cannot be imaged and converted to searchable text. The abstract is generally written by the author.

Access Control Information
A code indicating that access to a document is restricted. Access is restricted if the document is privileged, proprietary, or copyrighted.

Add Name
The names of all the persons to whom a document is addressed. Each entry in this field is linked to a corresponding entry in the Addressee Organization field.

Addressee Organization
The affiliation of each receiver or the organization to whom the correspondence is addressed if there is no personal receiver. Each entry in this field is linked to a corresponding entry in the Addressee Name field.

Author Name
The name of each person listed on the document as responsible for all or part of its creation. Only personal authors are entered in this field. Corporations as authors are captured in the Author Organization field. Each entry in this field is linked to a corresponding entry in the. Author Organization field.

Author Organization
The name of the organization (i.e., company, corporation or group) with which the author is affiliated at the time the document was created, or the name of the organization responsible for

creating or originating the document when there is no personal author. If an author works for one organization and is representing another, both affiliations should be captured. Each entry in this field is linked to a corresponding entry in the Author Name field.

Comments
Any information not covered in other fields which the submitter or indexer believes would be of help to identify or retrieve the document, or to further explain any field entry for the document. This field can be used for entries such as the language of the document (if it is not English) or the page numbers that are missing in an incomplete document.

Document Date
The date on which the document was completed, issued, effective or published. If the date is unknown, information in the document will be used to estimate a date.

Document Number
The identifying number(s) assigned to a document that distinguishes it from other documents (e.g., DOE Order No., Public Law number, report number). Document numbers appear (typed or handwritten) on the document itself and are considered to be control numbers. The Document Number is generally assigned by the issuing agency. Examples are report numbers, or public law numbers such as SAND86-1023, PL95-16, or H101-364.

Document Type
The general format or physical presentation of the document. Examples include correspondence, report or procedure.

Identifiers
Words or phrases that the submitter or indexer believes represent the subject content of the document and will assist users in retrieval. These may be acronyms or informal terms or cross-references to alternate nomenclature. The terms in this field may be included in a controlled vocabulary/LSS Thesaurus.

Keywords
Words or phrases that the submitter provides with the document to represent the subject content of the document and to assist the user in retrieval. Keywords are not necessarily contained in the LSS Thesaurus.

LSS Accession Number
A unique identifier assigned to each document entering the system. The capture station at which the document enters the LSS is also identified as pail of this number. The LSS Accession Number will also be used as a Related Record Number pointer for documents which have relationships to other documents in the LSS.

Media
The physical material upon which a document is stored.

Number of Images
The number of images of a document that was imaged from a hard-copy.

Package Identifier
An identifier assigned to all components of a group of documents submitted as a single entity. This field enables a package containing many documents which may or may not have relationships among them to be reassembled quickly and easily.

Participant Accession Number
A unique identification number assigned by the participant organization to each document submitted for entry into the LSS. This number assists the organization in locating documents it has submitted. This field should contain a specific alpha code identifying the participant organization,

e.g., DOE, NRC, NEV, and any other alphanumeric scheme which the submitting organization might use in accessioning their own documents. The number used may be the accession number used in the submitting organization's records system.

Physical Location Reference Information
Information on the storage location of an item submitted to the LSS as header only because its form does not permit imaging.

QA Record
An indicator of whether the document is a quality assurance record. Quality assurance records are those whose contents have been determined to furnish evidence of the quality and completeness of data, items, and activities related to the safety of the repository program.

Related Record Code
The code that represents the type of relationship between the document being entered and a document to which it is related. Each code in the authority list will have a reciprocal code; for example, the reciprocal of a document (A) that is attached to another document (B) is document (B) has attachments (A). Examples of Related Record Codes include: REV (revises or is a later version of), COR (corrects) or SUPR (supersedes). Each entry in this field is linked to a corresponding entry in the Related Record Number field.

Related Record Number
This field contains the LSS Accession Number(s) of a document that has a particular relationship to the document being entered. There are several types of relationships, such as: parent/child (a document and its attachments); original/subsequent (a document and a later version, comments, corrections, or errata); and whole/part (a book and its chapters, a journal and its articles); and an information package and the cataloging units it contains. The type of relationship is captured in the Related Record Code field. Each entry in this field will be linked to a corresponding entry in the Related Record Code field.

Special Class
This field identifies documents with special characteristics that are not captured in other fields; for example, a document in a foreign language.

Title
An identifying sentence or phrase given to the document that appears on the document, i.e., the actual title. If the actual title is not present for a document, a title must be created.

Traceability Code
A code that indicates the type of traceability number. Examples of this code include: DTN (technical data link), DI (Document Identifier), and WBS (Work Breakdown Structure). Each entry in this field is linked to a corresponding entry in the Traceability Number field.

Traceability Number
An identifier that has been assigned to a document in order to link it to a specific activity. These identifiers will enable searchers to easily retrieve all documents associated with any given activity by providing a special linkage not available through other fields. Examples of traceability numbers include WBS numbers, Data Tracking Number, and configuration item identifiers. Each entry in this field is linked to a corresponding entry in the Traceability Code field.

Version
The version, revision number, or status of a document that has or will have multiple iterations. It will correspond to information contained on the document, e.g., Revision 2, Version 1. Final, or Draft.

LSS Record Housekeeping and Audit Fields
(Field definitions to be provided by the NRC)

- Date Received at LSS
- Date Available in LSS
- Date/Time Loaded into LSS
- Date/Time of Last Modification
- LSS Indexer ID
- Station ID
- QC ID
- Subject and Abstract Cataloger ID
- Cataloging QC ID
- Processing Stage Status
- Verification ID
- Change Tracking Log
- Electronic Signature Verification
- Electronic Image Location
- Searchable Text Reference Info
- LSS Audit Info

Table 6-1 Documentary Material Data Elements

Requirement Identifier	Data Name	Description	Req. Ref.
LSS2-051-1	Document (Type A)	Documents represented as text, image, LSS header	LSS1-012 LSS1-013 LSS1-014
LSS2-051-2	Document (Type B)	Documents for which text is not provided. These documents will be converted to text using LSS functions unless they are graphic-oriented documents.	LSS1-012 LSS1-014
LSS2-051-3	Document (Type C)	Graphic-oriented documents stored only as image, LSS header. These are documents which are not suitable for conversion to text due to their graphic nature or the lack of data having significant retrieval value (such as columns of numbers).*	LSS1-012 LSS1-014
LSS2-051-4	Document (Type D)	Non-image/text material represented only as LSS header, with item location described.	LSS1-007 LSS1-012
LSS2-051-5	Document (Type E)	LSS header for privileged, confidential or safeguards information. Points to physical location of these documents outside of the LSS. In the case of privileged information, the data is located in a protective order file, which is not part of the LSS.	LSS1-012 LSS1-028

*As defined in 10 CFR 2, graphic oriented 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. They 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; Text 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."

Table 6-2. Minimum Header Fields for LSS Documentary Material
(Legend follows table.)

LSS Field	Manditory or Req'd by Participant	Manditory or Req'd by LSSA	Multivalued (max # of entries)	Max Field Length	Authority Table	Required Format
LSS Accession Number	N	M	N	13	N	Must be a unique number 3 digit alpha code w/submitting organization, 7 numerics and check digit
Participant Accession Number	M	N	Y (50)	25	N	Alpha numeric, no required format
Title	M	N	N	1000	N	N
Author Name	M	Y	Y (200)	50	Y	Last Name, First Initial, Middle Initial
Author Organization	M	N	Y (200)	65	Y	
Document Date	M	N	N	8	N	YYYYMMDD
Document Number	R	N	Y (5)	30	N	N
Version	R	N	Y (5)	50	N	N
Access Control Information	R	N	Y (10)	3	Y	N
Related Records Number	R	Y	Y (500)	25	Y	Alpha numeric
Related Record Code	R	Y	Y (500)	7	Y	N
Special Class	R	N	Y (10)	50	Y	N
Abstract (Field under consideration to be deleted)	N	N	N	5000	N	N
Package Identifier	R	Y	Y (500)	50	N	N
Document Type (Includes package types)	M	N	Y (3)	40	Y	N
Identifiers	N	N	Y (100)	80	N	N
Comments	N	N	N	1000	N	N
Media	R	N	Y (5)	7	Y	N
QA Record	M	N	N	1	Y	N
Traceability Number	R	R	Y (10)	50	N	N
Traceability Code	R	R	Y (10)	5	Y	N

Keywords	N	N	N	5000	N	Y Separate terms and phrases by punctuation
Number of Images	N	M	N	6	N	N
Physical Location Reference Information	R	R	N	1000	N	N
Addressee Name	R	N	Y (500)	50	Y	Last Name, Fl MI
Addressee Organization	R	N	Y (500)	65	Y	
LSS Record Housekeeping Info: Date Received at LSS Date Available in LSS Date/Time Loaded into LSS Date/Time of Last Modification LSS Indexer ID Station ID QC ID Subject and Abstract Cataloger ID Cataloging QC ID Processing Stage Status Verification ID Change Tracking Log Electronic Signature Verification Electronic Image Location Searchable Text Reference Info	N	Y	TBD	TBD	TBD	TBD
LSS Audit Info	N	R	TBD	TBD	TBD	TBD

Table 6-2 Legend:
Symbols: Y = Yes; N=No; R = Required; M = Mandatory; TBD = To Be Determined
For date fields, Y = year, M = month, D = day

Table definitions:

Data submitted by participant: This field will be submitted by the participant (Mandatory = must be provided for each unit [record]; Required = must be provided if applicable; Optional = provided at

discretion of participant.)

Provided by LSS System or LSSA: This field will be provided by LSS. (Mandatory = must be provided for each unit [record]; Required = must be provided if applicable)

Multi-valued: Multiple entries allowed in a field.

Controlled Authority List: List of accepted entries to be used by all participants, such as document types or specific forms of an organization name.

Text searchable: The ability to perform phrase or single-word searches of the field entries.

Comments/Issues:Any additional comments or outstanding issues.

Note: Detailed definitions of header fields are provided in Appendix C.

Table 7-1. Response Time Requirements

Requirement Identifier	Function/ Event	Conditions	Response Time 15/50 concurrent users
LSS2-065-2	Retrieval of query results list	UNLV test query INJD-T3-Q1 or TEJA-T#-Q2.[8] Database contains headers for at least 5 million pages of documents. A total of 10 documents found.	90 seconds/140 seconds
LSS2-065-3	Retrieval of header data for document identified in query results list.	Database contains headers for at least 5 million pages of documents.	10 seconds/15 seconds
LSS2-065-4	Retrieval of text data for document identified in query results list.	Database contains at least 5 million pages of documents.	First page: 10 seconds/15 seconds Each subsequent page: 3 seconds at the Main facility, 6 seconds at the Supported Sites
LSS2-065-5	Retrieval of image data for document identified in query results list.	Database contains at least 5 million pages of documents.	First page: 30 seconds/45 seconds Each subsequent page: 6 seconds at the Main Facility 9 seconds at the Supported Sites
LSS2-065-6	Document bilevel scanning	8-1/2x 11 inch paper. All prior data entry needed for document scanning complete prior initiation, paper loaded on scanner.	30 pages per minute for single sided, 15 pages per minute for double sided (30 bilevel images created)
LSS2-065-7	New Document Access	Measured from the time a new document (header, text and image) has been captured and stored in the LSS until it is available for retrieval and viewing at the supported sites.	24 hours. Comment: This means that any method of dissemination from the capture site(s) to the retrieval sites must support access to newly entered documents within 24 hours, or an ongoing basis. Weekly or monthly updates to the reading rooms, for example, would not be acceptable.
LSS2-065-8	New Transcripts	Measured from the time that daily transcripts are imported into the LSS until the time they are available for viewing as text.	1 hour.
LSS2-065-9	Prepare Searchable Text	Time to perform Prepare Text for Search function. (See Section 3. 1)	Less than 20 seconds, on average, to add a document consisting of 10 full text pages, to an existing text base of 5 million pages.
LSS2-065-10	Backup Data	Time to backup system data of any type. Incremental or full backup.	2 Gigabytes per hour
LSS2-065-11	Restore Data	Time to restore system data of any type.	1.5 Gigabytes per hour

Table 9-1. Allocation of User Types to Access Locations

Access Locations					
DOE Headquarters, Washington, D.C.	A	B			
DOE Project Office, Las Vegas, NV	A	B			
NRC Reading Room, Washington, D.C.	A	B			
NRC Region 1 Office, King of Prussia, PA	A				
NRC Region 2 Office, Atlanta, GA	A				
NRC Region 3 Office, Glenn Ellyn, IL	A				
NRC Region 4 Office, Arlington, TX	A				
Las Vegas, NV	A	B			
Reno, NV	A	B			
Carson City, NV	A	B			
Churchill County, NV	A				
Clark County, NV	A	B			
Esmeraldo County, NV	A	B			
Eureka County, NV	A				
Inyo County, NV	A	B			
Lander County, NV	A				
Lincoln County, NV	A	B			
Mineral County, NV	A				
Nye County, NV	A	B			
White Pine County, NV	A				
National Cong. of American Indians, Oneida, WI		B			
Main Facility (Location TBD)			C	D	E
Hearing Room (Location TBD)		B		D	
Remote	A	B			
M&O Las Vegas		B			
M&O Virginia		B			

User Types:

A = Public Document Room Users
B = LSS Participants
C = System Administrator/Staff
D = Capture Personnel
E = LSSA Quality Checking Authority

Table 9-2 - Allocation of Functions to User Types

Functions							
Scan Paper to Image				D			
Partial Document Scanning				D			
Import Electronic Document				D			
Import Image				D			
Import Text				D			

Import Electronic Message				D			
Import Header				D			
Create Electronic Header				D			
Enter Header Data				D			
Authority Table Checking				D			
Convert Image to Text				D			
Prepare Text for Search				D			
Check for Duplicate Documents				D	E		
Mark Document as Superseded			C				
Assure Document Capture Quality				D			
Pre-Store Quality Check - Header				D			
Pre-Store Quality Check - Image				D			
Pre-Store Quality Check - Text				D			
Text Spell Check				D			
Rejected Document List				D			
Correct Header Errors (Pre-Store)				D			
Replace Image Pages				D			
Interactive Text Correction				D			
Store Document (Link Text, Image, Header)				D			
Store Document Header				D			
Store Document Text				D			
Store Document Image				D			
Link Document Components				D			
Preclude Orphan Image/Text							G
Define Information Package				D			
Query for Document	A	B			E	F	
Query Header	A	B			E	F	
Query Text	A	B			E	F	
Text Query Parameters	A	B			E	F	
Query Header and Text	A	B			E	F	
Save/Reuse Query	A	B			E	F	
Provide Query Status	A	B			E	F	
Query Assistance	A	B			E	F	
Save Query Result Set	A	B			E	F	
Display Document	A	B			E	F	
Display Header	A	B			E	F	
Display Text	A	B			E	F	
Locate Search Terms in Document	A	B			E	F	
Display Image	A	B			E	F	
Image Viewing	A	B			E	F	
Display Image and Text	A	B			E	F	
Viewing Options	A	B			E	F	
Identify Document as Superseded	A	B			E	F	
Print Document	A	B			E	F	

Print Header	A	B			E	F	
Print Text	A	B			E	F	
Print Standard Image	A	B		D	E	F	
Print Oversize Image		B	C	D	E		
Print Results List	A	B					
Print Screen	A	B		D	E		
Request Paper Copy	A	B			E	F	
Process Paper Copy Request			C				
Create Electronic Message		B				F	
Delete Electronic Message		B				F	
Store Electronic Message		B				F	
Edit Electronic Message		B				F	
Electronic Messsage Import/Export		B				F	
Address Electronic Message		B				F	
Send Electronic Message		B				F	
Display Electronic Message		B				F	
Acknowledge Message Delivery							G
Report Message Delivery Failure							G
Print Electronic Message		B				F	
Designate Official Record Material			C				
Retrieve Official Record Material	A	B			E	F	
Import Transcripts				D			
Start Up System			C				
Shut Down System			C				
Backup Data			C				
Restore Data			C				
Monitor System Status			C				
Monitor Session Activity			C				
Data Base Administration Tools			C				
Store Non-Document-Related Items			C		E		
Retrieve Non-Document-Related Items			C		E		
Delete Non-Document-Related Items			C		E		
Administer Address Book			C				
System Logins			C				
Log-On LSS	A	B	C	D	E	F	
Log-Off LSS	A	B	C	D	E	F	
Change Personal Password		B	C	D	E	F	
Create/Modify User Account			C				
Set Functional Access Authorizations			C				
Set Data Access Authorizations			C				
Set Header Field Protection			C				
Edit Documents			C				
Edit Header Fields (Post-Store)					E		
Replace Image Pages - Post-Store					E		

Interactive Text Correction - Post-Store					E		
Document Deletion			C		E		
Undelete			C				
Enforce Functional Access Authorizations							G
Enforce Data Access Authorizations							G
Enforce Header Field Protections							G

User Types:

A = Public Document Room Users
B = LSS Participants
(Includes parties and potential parties)
C = System Administrator/Staff
D = Capture Personnel
E = LSSA Quality Checking Authority
F = Dial-In User
(Functions only available if user provides necessary retrieval hardware and communications. Electronic messaging functions will only be available to parties)
G = System

Table 9-3. Retrieval Hardware Locations

Access Locations										
DOE Headquarters, Washington, D.C.	3P	1Q	1R	1S		3P	2Q			
DOE Project Office, Las Vegas, NV	5P	1Q	1R	1S		3P	2Q			
NRC Reading Room, Washington, D.C.	5P	2Q	1R	1S		3P	2Q			
NRC Region 1 Office, King of Prussia, PA						3P	2Q			
NRC Region 2 Office, Atlanta, GA						3P	2Q			
NRC Region 3 Office, Glenn Ellyn, IL						3P	2Q			
NRC Region 4 Office, Arlington, TX						3P	2Q			
Las Vegas, NV	3P	1Q	1R	1S		3P	2Q			
Reno, NV	3P	1Q	1R	1S		3P	2Q			
Carson City, NV	3P	1Q	1R	1S		3P	2Q			
Churchill County, NV						3P	2Q			
Clark County, NV	3P	1Q	1R	1S		3P	2Q			
Esmeraldo County, NV	3P	1Q	1R	1S		3P	2Q			
Eureka County, NV						3P	2Q			
Inyo County, NV	3P	1Q	1R	1S		3P	2Q			
Lander County, NV						3P	2Q			
Lincoln County, NV	3P	1Q	1R	1S		3P	2Q			
Mineral County, NV						3P	2Q			
Nye County, NV	3P	1Q	1R	1S		3P	2Q			
White Pine County, NV						3P	2Q			
National Cong. of American Indians, Oneida, WI	3P	1Q	1R	1S						
Main Facility (Location TBD)	5P	5Q	2R	2S	2T					
Hearing Room (Location TBD)	5P	3Q	1R		1T					
M&O Las Vegas	5P	2Q	1R	1S	1T					
M&O Virginia	5P	2Q	1R	1S						

LSS Parties
- P = Retrieval Station
- Q = Printer (Slow)
- R = Printer (Fast)
- S = Oversize Printer (Slow)
- T = Oversize Printer (Fast)

Public Reading Room
- P = Retrieval Station
- Q = Printer (Slow)
- R = Printer (Fast)
- S = Oversize Printer (Slow)
- T = Oversize Printer (Fast)

[Figure 9-1 was reproduced from a poor copy. See Table 9-1 for LSS locations.]

Return to References

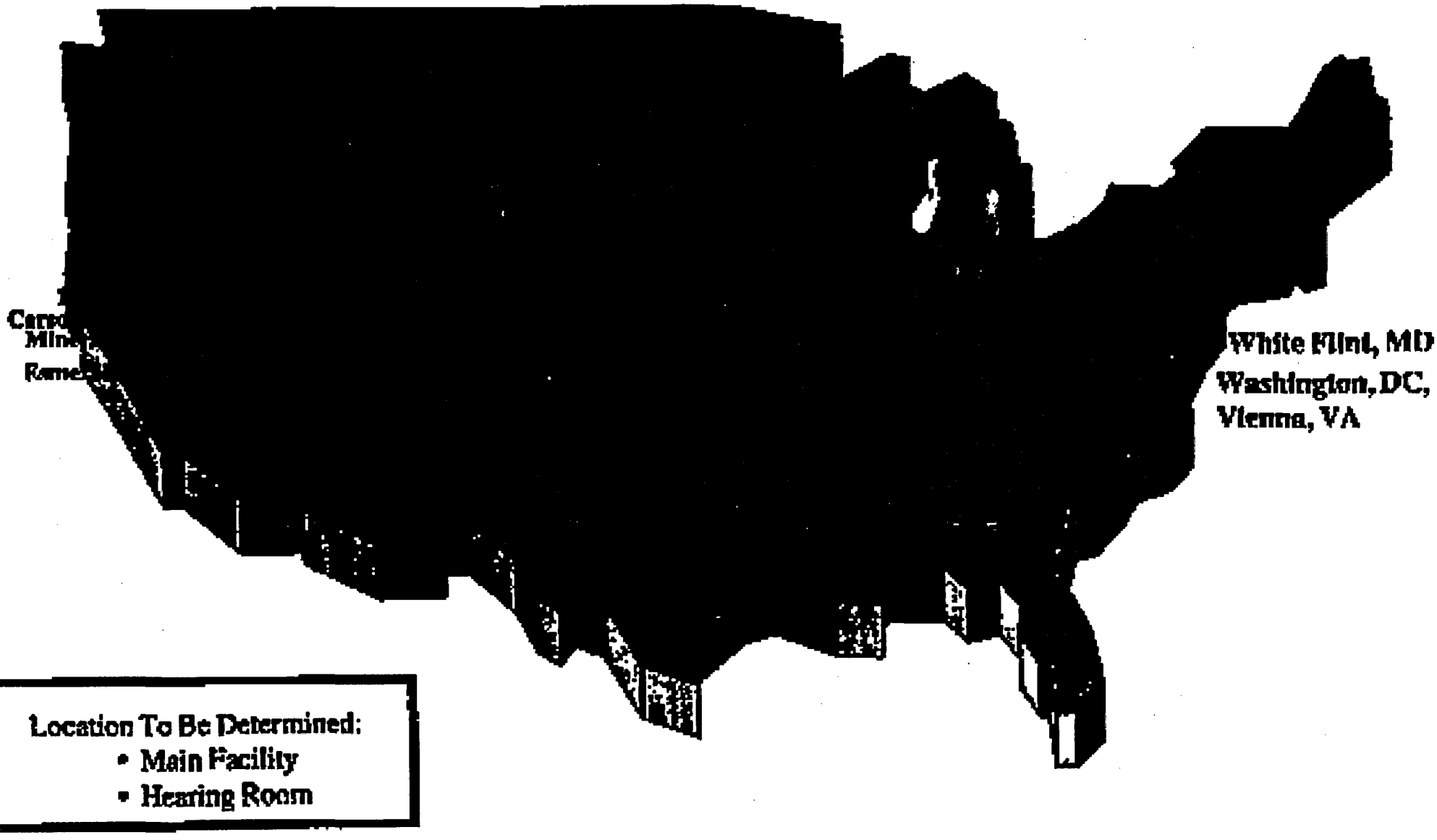

Figure 9-1 LSS Locations

U. S. NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REGULATORY RESEARCH
REGULATORY GUIDE 3.69

September 1996

(Draft was DG-3009)

TOPICAL GUIDELINES FOR THE LICENSING SUPPORT SYSTEM

A. INTRODUCTION

Subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository" (10 CFR 2.1000 to 2.1027), of 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," sets forth procedures for an adjudicatory proceeding on the application for a license to receive and possess high-level nuclear waste at a geologic repository under 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories." Pursuant to these regulations, the Licensing Support System (LSS), an electronic information management system, is being designed and implemented to provide for the entry of and access to potentially relevant licensing information.

This regulatory guide defines the scope of documentary material that should be included in the LSS. Interim topical guidelines, drafted by the High-Level Waste Licensing Support System Advisory Review Panel (LSSARP), were adopted by the U.S. Nuclear Regulatory Commission with the statement that the topical guidelines would later be revised and set forth as a regulatory guide by NRC staff (see 54 FR 14925, dated April 14, 1989). The interim topical guidelines were partially modeled after the environmental assessments prepared in connection with the U.S. Department of Energy's (DOE's) site selection process.

Document is defined in 10 CFR 2.1001 as "...any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic." In addition, 10 CFR 2.1001 defines documentary material as "...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 the applicable NRC Regulatory Guide." The forms of these materials are listed in Appendix A to this guide, a non-exhaustive list of types of documents that may be included in the LSS.

In developing this final regulatory guide, the interim topical guidelines, the Draft Regulatory Guide DG-3003, "Format and Content of the License Application for the High-Level Waste Repository," and comments from the public and LSSARP (which strongly advocates expanding the LSS topical guidelines to all relevant information) were considered. Topics for information entered into the LSS will not only be consistent with information that is needed for the license application but also will contain additional information related to DOE's Environmental Impact Statement.

The information collections contained in this regulatory guide are covered by the requirements of 10 CFR Part 2, which were approved by the Office of Management and Budget, approval number 3150-0136. The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. DISCUSSION

Purpose of the Regulatory Guide

The purpose of this regulatory guide is to provide a list of the topics (Section C) for which LSS participants should submit documentary materials for entry into the LSS under 10 CFR 2.1003. The topical guidelines are designed to be broad enough to encompass all potential licensing issues.

This regulatory guide will also be used by the Pre-License Application Presiding Officer for evaluating petitions for access to the LSS during the pre-license application phase under 10 CFR 2.1008.

This regulatory guide will not be used as the detailed topical index for documentary evidence contained in the LSS. I will neither be used to establish standing in the high-level waste licensing proceeding nor serve to determine the scope of contentions that may be offered in the application proceeding under 10 CFR 2.1014.

Use of the Regulatory Guide

To the extent practicable, the regulatory guide format follows the repository systems and conforms to the approach taken in other generic NRC licensing documents for the high-level waste repository program. The actual format of the documents submitted is not specified in this regulatory guide. Further guidance regarding format is being developed in Draft Regulatory Guide DG-3003, "Format and Content for the License Application for the High-Level Waste Repository."

Section C of this regulatory guide lists the topics of documents to be placed in the LSS. Appendix A to this regulatory guide contains a nonexhaustive list of the types of documents to which the topical guidelines of Section C should be applied. Documents not included in Appendix A should also be included in the LSS if they are related to a topic in Section C of this regulatory guide.

Because the topical guidelines of Section C have been kept broad and at a fairly high level of detail, the user should consider each topic to be inclusive rather than exclusive. For instance, in 10 CFR Part 60, Subpart F requires a performance confirmation program for the various components of the repository system. However, performance confirmation is not listed as a topic in this regulatory guide. Rather, information pertinent to performance confirmation for any particular component of the repository system would be considered to be within the topic designating that particular system. (Performance confirmation relevant to geologic processes would be considered topical information under the appropriate heading for the "Natural System.")

Each topical guideline of Section C should be considered all-inclusive with regard to all documents germane to that topic for the site. For example, much of the information that supports the licensing proceeding will be based on the use of methodologies, computer codes, and models. It is appropriate for such information to be included in the LSS. As stated above, Draft Regulatory Guide DG-3003 is being developed to provide guidance on the information that should be submitted in the license application and on the types of information that should be included in the LSS.

To ensure that socioeconomic issues would be covered, the subcategories "Environmental," "Socioeconomic," and "Transportation" are included under Topical Guideline 12.0, "Information for Preparation of a Geologic Repository Environmental Impact Statement." Only information on transportation of high-level waste from a reactor, from an independent spent fuel storage facility, or from a monitored retrievable storage facility to a repository should be included under the transportation topical guideline.

C. TOPICAL GUIDELINES

1. General Information
    1. General Facility Description
    2. Basis for Licensing Authority
    3. Schedules Relevant to the NRC/DOE Repository Programs
    4. Any Publicly Available Information on Certification of Safeguards

5. Any Publicly Available Information on the Physical Security Plan
6. Site Characterization
7. License Specifications (those variables, conditions, or other items that DOE determines to be probable subjects of license specifications)
8. Information Relevant to NRC Findings Regarding Compliance with Statutes [other than (a) The Atomic Energy Act, as amended; (b) the Energy Reorganization Act of 1974; and (c) the Nuclear Waste Policy Act, as amended] that Federal agencies must take cognizance of in licensing actions (e.g., American Indian Religious Freedom Act, Endangered Species Act of 1973, or the National Environmental Policy Act).

2. The Natural Systems of the Geologic Setting
    1. Geologic System
        1. Regional Geology
        2. Site Geology
        3. Future Variations in Geologic Processes
    2. Hydrologic System
        1. Surface Water Hydrology
        2. Regional Hydrogeology
        3. Site Hydrogeology
    3. Geochemical System
        1. Regional Geochemistry
        2. Site Geochemistry
    4. Climatological and Meteorological Systems
        1. Present Climate and Meteorology
        2. Paleoclimatology
        3. Future Climatic Variation
    5. Integrated Natural System Response to the Maximum Design Thermal Loading
    6. Processes and Events (anticipated and unanticipated, potentially disruptive)
    7. Effectiveness of Natural Barriers against the Release of Radioactive Material to the Environment (information relevant to the performance objectives of 10 CFR 60.113)
3. Geologic Repository Operations Area (GROA): Physical Facilities
    1. Surface Facilities
        1. Waste-Handling System, Buildings or Equipment (Including Hot Cell)
        2. Onsite Radioactive Waste Management System
        3. Fire and Explosion Protection Systems
        4. Emergency Systems
        5. Communication Systems
        6. Utility Systems
        7. Instrumentation and Control Systems
        8. Onsite Transportation System
        9. Ventilation Systems
        10. Operations Support Systems
        11. Plans for the Decommissioning System
        12. Other Surface Systems
    2. Shafts/Ramps
        1. Waste Shaft/Ramp
        2. Muck Shaft/Ramp
        3. Ventilation Intake Shafts
        4. Ventilation Exhaust Shafts
        5. Personnel and Materials Shafts
        6. Plans for the Decommissioning System
        7. Other Shaft/Ramp Systems
    3. Underground Facility
        1. Excavation and Ground Support Systems
        2. Muck-Handling System
        3. Ventilation System
        4. Waste Emplacement System
        5. Waste Retrieval System

        6. Emergency Systems
        7. Communication System
        8. Operations Support System
        9. Plans for the Decommissioning System
        10. Other Underground Systems
    4. Interface of Structures, Systems, and Components
    5. Retrievability of Waste
    6. Effectiveness of the GROA against the Release of Radioactive Materials to the Environment (Information relevant to the performance objectives of 10 CFR 60.111)
4. Engineered Barrier Systems
    1. Waste Package
    2. Waste Form
    3. Underground Facility
    4. Engineered Barrier System Waste Package Emplacement Environment
    5. Engineered Barrier System Alternate Design Features
    6. Effectiveness of Engineered Barriers against the Release of Radioactive Material to the Environment (Information relevant to the performance objectives of 10 CFR 60.113)
5. Overall System Performance Assessment
    1. Basic Approach
    2. System Description
        1. Conceptual Models
        2. Processes and Events (Potentially Disruptive)
        3. Processes and Events (Undisturbed Performance)
    3. Cumulative Release of Radioactive Materials
        1. Screening of Processes and Events
        2. Scenario Development and Screening
        3. Consequence Analyses: Estimates of Cumulative Releases
        4. Probability Estimates
        5. Model and Code Validation
    4. Undisturbed Performance
        1. Individual Protection Requirements
        2. Groundwater Protection Requirements
        3. Model and Code Validation
6. Conduct of Repository Operations
    1. Maintenance
    2. Organization
    3. Personnel
    4. Records/Reports
    5. Training Programs
    6. Schedules
    7. Identification of Operating Controls and Limits
    8. Preservation of Records
    9. Site Markers
7. Land Ownership and Control
    1. Plans for Restricting Controlled Area Access
        1. Identification of Controlled Area
        2. Identification of Existing Legal Interests
        3. Identification of Legal Interests To Be Obtained
        4. Water Rights
    2. Plans for Regulating Land Use Outside the Controlled Area
        1. Identification of Adjacent Areas of Concern
        2. Identification of Existing Legal Interests
        3. Identification of Legal Interests To Be Obtained
    3. Plans for Regulating Land Use at the GROA
    4. Other Types of Legal Interests
8. Quality Assurance (QA) Records
    1. QA Records for Site Characterization

   2. QA Records for Design and Construction
   3. QA Records Including Records Covering Operations, Permanent Closure, Decontamination, and Decommissioning
   4. QA Records for All Relevant Research Activities
9. Emergency Planning
10. Radiation Protection
   1. Ensuring that Radiation Exposures are As Low As Is Reasonably Achievable (ALARA)
   2. Radiation Sources
   3. Radiation Protection Design Features
   4. Estimated Onsite Dose Assessment
   5. Health Physics Program
   6. Estimated Offsite Dose Assessment
11. Any Alternatives Considered (e.g., design interpretations, models)
12. Information for Preparation of a Geologic Repository Environmental Impact Statement
   1. Environmental
   2. Socioeconomic
   3. Transportation [Transport of high-level waste from a reactor, from an independent spent fuel storage facility, or from a monitored retrievable storage facility to proposed repository]

APPENDIX A
CATEGORIES OF DOCUMENTS TO BE INCLUDED IN THE LICENSING SUPPORT SYSTEM

This appendix contains a non-exhaustive list of the types of documents that should be included in the Licensing Support System.

1. Technical reports and analyses by all participants (including those developed by contractors). Note that this applies only to final technical reports and does not include preliminary drafts (including predecisional and other internal review drafts) other than "circulated drafts," as defined in 10 CFR Part 2, Subpart J (Item 6 below). See 10 CFR 2.1019(i)(2), which states that preliminary drafts, although subject to derivative discovery, are excluded from entry in the LSS.
2. Quality assurance records
3. External correspondence
4. Internal memoranda
5. Meeting minutes/transcripts
6. Draft documents on which a nonconcurrence has been registered
7. Congressional questions and answers
8. Other documents (for 8.1 through 8.9, include references to other data bases)
   1. Draft and final environmental assessment for the site characterized
   2. Site characterization plan
   3. Site characterization study plans
   4. Site characterization progress reports
   5. Issue-resolution reports
   6. License application
   7. Topical reports, data, and data analyses
   8. The U.S. Department of Energy (DOE) Environmental Impact Statement
   9. Recommendation report to the President of the United States (notice of disapproval, if submitted)
   10. Any publicly available information on rulemakings
   11. Public and agency comments on documents
   12. Response to comments
   13. NRC technical positions
   14. NRC regulatory guides
   15. The DOE project-decision schedules
   16. DOE program-management documents

APPENDIX B

EXCLUDED AND PRIVILEGED INFORMATION

In 10 CFR 2.1005, "Exclusions," the types of information excluded from the Licensing Support System (LSS) are listed. Discovery privileges are discussed in Sections 2.1006(a), (b), and (c). These sections of 10 CFR are reproduced below.

10 CFR 2.1005 Exclusions.

The following material is excluded from entry into the Licensing Support System, either through initial entry pursuant to §10 CFR 2.1003 of this subpart, or through derivative discovery pursuant to §10 CFR 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. Preferences [sic] [references] cited in contractor reports that are readily available;
g. Classified material subject to Subpart I of this Part.

10 CFR 2.1006 Privilege.

a. Subject to the requirements in §10 CFR 2.1003(d) of this subpart, the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in §10 CFR 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 Presiding Officer or the Presiding Officer, must be submitted by the party, interested governmental participant, or potential party that asserted the claim to-

   1. The LSS Administrator, for entry into the LSS, into an open access file; or

   2. [To] the LSS Administrator or to the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §10 CFR 2.1010(b) or §10 CFR 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 LSS pursuant to §§10 CFR 2.1003(a) and §2.1003(b) of this subpart.

REGULATORY ANALYSIS

A separate regulatory analysis was not prepared for this regulatory guide. The regulatory analysis prepared for Draft Regulatory Guide DG-3003, "Format and Content for the License Application for the High-Level Waste Repository," provides the regulatory basis for this regulatory guide as well. A copy of the regulatory analysis is available, in the file for DG-3009, for inspection and copying for a fee, at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The Public Document Room's mailing address is Mail Stop LL-6, Washington, DC 20555; phone (202) 634-3273; fax (202) 634-3343.

USNRC REGULATORY GUIDES

Regulatory Guides are issued to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the NRC staff in its review of applications for permits and licenses. Regulatory Guides are not substitutes for regulations, and compliance with them is not required. Methods and solutions different from those set out in the guides will be acceptable if they provide a basis for the findings requisite to the issuance or continuance of a permit or license by the Commission.

This guide was issued after consideration of comments received from the public. Comments and suggestions for improvements in these guides are encouraged at all times, and guides will be revised, as appropriate, to accommodate comments and to reflect new information or experience. Written comments may be submitted to the Rules Review and Directives Branch, DFIPS, ADM, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guides are issued in the following ten broad divisions:

1. Power Reactors
2. Research and Test Reactors
3. Fuels and Materials Facilities
4. Environmental and Siting
5. Materials and Plant Protection
6. Products
7. Transportation
8. Occupational Health
9. Antitrust and Financial Review
10. General

Single copies of regulatory guides may be obtained free of charge by writting the Office of Administration, Attention: Distribution and Services Section, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by fax at (301) 415-2260.

Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

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November 4, 1996

MEMORANDUM TO:
Chairman Jackson
Commissioner Rogers
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan

FROM:
James M. Taylor
Executive Director for Operations

SUBJECT: LICENSING SUPPORT SYSTEM

In SECY-96-178, the staff advised the Commission of issues pertaining to the Licensing Support System and its proposed use in the Department of Energy's license application for a high level radioactive waste repository. Due to advances in technology that have occurred since the LSS concept was developed, the staff recognized the need to reexamine the foundations and assumptions upon which the 10 CFR 2, Subpart J (the LSS rule) is based. A series of strategies were proposed to resolve outstanding issues involving the rule in light of advances in computer technology while reflecting the current status of repository licensing activities.

In a Staff Requirements Memorandum dated October 8, 1996, the Commission approved all components of the proposed strategy. In addition, the Commission indicated:

> *The staff should provide estimates of the resources needed, and describe any reprioritization impacts associated with those resources, to complete the consensual process (p. 9) in the six-month time frame noted in the staff response to Commissioner Diaz's questions.*

As described in SECY-96-178, the staff intends to conduct an electronic discussion with the LSS Advisory Review Panel to identify issues related to the future direction of the LSS. This discussion will use many of the tools and processes developed for NRC's Rulenet. The staff originally expected to have completed this effort by October 15, 1996. However, the Commission's response to SECY-96-178 and subsequent discussions among the members of the LSS Senior Management Team have expanded the scope of this initiative.

The staff now expects this process to run for approximately six months. A proposed Federal Register Notice describing the operation is provided as Attachment 1 to this memorandum. No NRC procurements are anticipated during this time. However, limited NRC staff and National Laboratory resources are anticipated as indicated in Attachment 2. Due to the limited resource requirements, and the distribution of effort across several NRC organizations, no staff reprioritization is anticipated to complete the proposed consensual process.

The dialogue promoted through the consensual process is not intended to supplant formal comments on any proposed rule that may eventually be developed. Rather, it is intended to provide additional opportunities for those interested in LSS rulemaking issues to provide input to agency personnel before the agency has developed text on which formal written comments are required to be filed. This can mean better informed, focused, and influential comments. Likewise, the ability of these commenters to interact among themselves before comments are filed means that misunderstandings and miscommunications can be corrected in a timely way.

Should results of the consensual process indicate that changes to 10 CFR 2, Subpart J are appropriate, a formal rulemaking will be initiated.

If you have any questions regarding this status report or the technical approach proposed by the staff, Arnold E. Levin, Licensing Support System Administrator, is available at 415-7458.

Attachments:
As stated

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Federal Register Notice

Vol. 61, No. 225 / Wednesday, November 20, 1996 /59031-59033

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

LSSNet Communication Program; Licensing Support System Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: LSSNet Program: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of a computer-based communications program called "LSSNet" to maximize the interaction between the NRC, the LSS Advisory Review Panel, and the public on rulemaking issues related to the Licensing Support System (LSS). The LSS is an electronic information management system established in 10 CFR Part 2, Subpart J, of the Commission's regulations, designed to support the licensing proceeding for the national high-level waste repository. The LSS has not yet been developed. Many features of the rule first adopted in 1988 no longer provide optimal approaches to electronic information management. This topic was a primary discussion item at the May 3, 1996, meeting of the LSS Advisory Review Panel. LSSNet will allow the LSS Advisory Review Panel (LSSARP), other potential users of the LSS, and the public to communicate both with the NRC and among themselves, with a view toward defining LSS rulemaking issues, identifying alternatives to address those issues, and determining the extent of agreement on those alternatives.

DATE: The public can access the LSSNet site beginning November 1, 1996. LSSNet will run from November 20, 1996 through May 20, 1997.

ADDRESSES: The LSSNet World Wide Web site may be accessed with the Uniform Resource Locator http://lssnet.llnl.gov.

FOR FURTHER INFORMATION CONTACT: John C. Voglewede, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7415.

SUPPLEMENTARY INFORMATION:

Background: The Nuclear Regulatory Commission is undertaking a project designed to use state-of-the-art computer technology to maximize interaction between the NRC, its LSS Advisory Review Panel (LSSARP), and the public on the issue of the integration of new computer technologies into the Licensing Support System (LSS). The LSS is an electronic information management system and was incorporated in the Commission's Rules of Practice at 10 CFR Part 2 Subpart J. The current project, called LSSNet, is intended to serve not only to provide the NRC and the public with valuable information, but also to maximize the usefulness of computer-based communications as a tool in the rulemaking process. LSSNet is intended to maximize the interaction between the NRC, the LSSARP, and the public on rulemaking issues related to the LSS. The LSSARP was chartered under the Federal Advisory Committee Act to advise the NRC on the design, development, and use of the LSS. LSSNet will allow the LSSARP, other potential users of the LSS, and the public to communicate both with the NRC and among themselves, with a view toward defining LSS rulemaking issues, identifying alternatives to address those issues, and determining the extent of agreement on those alternatives. LSSNet builds on a pilot program, called RuleNet, which the Commission used to demonstrate the feasibility of increasing the interaction between the public and the NRC on the discussion of rulemaking issues through electronic communication technology (see SECY-96-188). Before the initiation of the RuleNet pilot program, the NRC had already introduced significant innovations in the area of rulemaking: through the concept of "enhanced participatory rulemaking," designed to promote early

public comment and interaction on rulemaking issues before a proposed rule is developed; through the use of Negotiated Rulemaking as provided in the Negotiated Rulemaking Act of 1988; and through electronic bulletin boards, which allow comments on a proposed rule to be submitted electronically. RuleNet represented a further step toward melding early public comment and interaction, as in the enhanced participatory rulemaking, together with communications technology, developed specially for this purpose, to permit participants to deal with one another and with the NRC by computer.

The potential for computer technology to improve the current rulemaking process can be readily illustrated. In a traditional rulemaking, if a particular matter raises questions in the minds of participants, they have no recourse other than to point out the issue in their written comments. If the rulemaking is on a proposed rule, the commenter may not learn the answer to the question until the final rule is issued. The computer, however, allows the agency staff to analyze the comments and questions received, ascertain which questions arise most often, and then post electronically a list of "Frequently Asked Questions" and their answers. In this way, doubtful points can be clarified before, not after, comments are filed.

The dialogue promoted through the LSSNet is not intended to supplant formal comments on any proposed rule that may eventually be developed from the LSSNet process. Rather, LSSNet is intended to provide additional opportunities for those interested in LSS rulemaking issues to provide input to agency personnel before the agency has developed text on which formal written comments are required to be filed. This can mean better informed, focused, and influential comments. Likewise, the ability of these commenters to interact among themselves before comments are filed means that misunderstandings and miscommunications can be corrected in a timely way. However, because the electronic communications will contribute to the information base used by the agency in the rulemaking process, a copy of these communications will be placed in the rulemaking record.

To facilitate the exchange of views, LSSNet provides discussion areas, designed to encourage dialogue among subgroups of participants. These discussion areas will allow participants of similar viewpoints to join together to discuss an issue to maximize their effectiveness. Discussion areas could also be used to allow a specific issue to be placed before all participants for highly focused consideration. In this way, a particular topic can be considered in detail, the strengths and weaknesses of conflicting positions can be analyzed, and the possibilities of a compromise resolution can be explored. Dialogue may take place either separate from the discussion areas provided in LSSNet by the private interaction of participants, or through the LSSNet discussion areas .

Assistance to the participants will be provided by facilitators who will perform a variety of functions: helping to categorize comments on LSS issues; helping to maximize the usefulness of the electronic communications process; and providing assistance to facilitate on-line and offline discussions, including helping participants to articulate and refine their positions on issues. The facilitators' role will simply be to contribute to the smooth and productive functioning of the process. Phases of the LSSNet Process

As a preliminary step, necessary to allow meaningful participation in the LSSNet process, the NRC is making relevant information on the LSS available to all who can use it: that is, both potential participants and those who want only to observe the process. Toward this end, the agency has made some basic documents pertaining to the LSS available through LSSNet in full text form.

In the first phase of the process, which will comprise approximately 10 days, the NRC will solicit comment on the challenges and issues identified by the staff and posted under the heading of "Discussion Topics" in the LSSNet FORUM. Participants will be permitted to suggest other "Topics". The NRC staff will review the comments/"Topics" posted during the first phase and use them to fashion a number of alternative solutions to the LSS rulemaking issues. During the second phase, participants will have an opportunity to comment on these alternative approaches or to suggest other alternative solutions but no new "Topics" will be solicited. After the second phase, the NRC staff will consolidate and synthesize the challenges and the proposed solutions, using them to develop more concrete proposals to the rulemaking issues, including draft rulemaking text if practicable, which will be posted electronically. During the third phase, the participants will then respond to the proposals the staff identified. As before, there will be the opportunity for participants to discuss either within the electronic

rulemaking or outside of it. The staff will use the results of the LSSNet interactions in Phase 3 to develop a draft proposed rule which will be submitted to the Commission for review and approval.

Terms of Participation

LSSNet is primarily intended as a forum through which the LSS Advisory Review Panel can advise the Commission on how best to integrate changes in technology into the framework of the LSS. Consequently, the electronic Forum will be reserved for the use of members of the LSSARP and their representatives. As would be the case with face to face meetings, the NRC will ensure compliance with the relevant provisions of the Federal Advisory Committee Act with respect to consensus documents. Thus, where consensus is requested, votes of FACA committee members will be cast and recorded. In keeping with the openness provisions of FACA, interested members of the public will be able to observe the dialogue between the LSSARP and the Commission, and will also be able to post comments on the public segment of LSSNet. The NRC staff will fully consider both LSSARP comments and public comments in refining the rulemaking issues for Commission consideration.

The NRC fully expects that all participants will recognize that certain norms of civility will be observed. (In the event that a participant's conduct was such as to warrant his or her severance from the electronic dialogue, the option of submitting paper comments would remain, but it seems unlikely that this issue would ever arise.)

LSS Rulemaking Issues

The LSS concept grew out of the Commission's concern regarding how best to review the DOE license application for a high-level radioactive waste (HLW) repository. A centralized, electronic database accessible by all parties appeared to offer the opportunity for significant time savings in conducting the licensing proceeding for the repository and, simultaneously, for the enhancement of any party's opportunity for effective participation. Plans for the LSS were first initiated in 1986 and were based on computer technology available in that time frame. It was intended to provide a central, shared, federally funded database of licensing information beginning in 1995. Budgetary shortfalls, however, and the unanticipated length of time that it has taken to develop the licensing application for the repository, not only delayed the development of the LSS, but also resulted in the accumulation of a tremendous amount of potential licensing information, much of which may no longer be relevant to a licensing proceeding which may not begin until about 2002. In addition, since document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture ALL relevant material in the LSS is substantially larger than originally assumed. While the development of the LSS remained stalled, the state of technology in document automation and retrieval overtook the technology of 1986 on which the original LSS was to be based. With the widespread and common place use of computers to generate and maintain the documents of a party to the HLW licensing proceeding, the universal availability of the Internet to tie disparate and geographically dispersed systems together, and the availability of commercially available software applications relevant to LSS functionalities, the centralized LSS envisioned at the time the LSS rule was developed may be obsolete. Consequently, the Commission intends to evaluate how these new technologies can be integrated into the LSS rule while still maintaining the primary functions of the LSS: (1) a mechanism for the discovery of documents before the license application is filed; (2) electronic transmission of filings by the parties during the proceeding; (3) electronic transmission of orders and decisions related to the proceeding; and (4) access to an electronic version of the docket. It is the intent of the NRC staff to focus this rulemaking on how best to address changes in technology in regard to the LSS. There is no intent to re-visit the basic functionalities of the LSS that are reflected in the current 10 CFR Part 2, Subpart J or the conditions of the negotiated rulemaking.

To attempt to address these issues, the NRC is posting the following "topics" to guide the discussion during the first phase of LSSNet:

- What are the costs and benefits of moving from a dedicated, centralized system to a distributed system based on the Internet?
- How should other improvements in computer technology be incorporated into the LSS?

- What provisions of the LSS rule will need to be changed to reflect the incorporation of new technologies?
- How should the backlog of "uncaptured", and possibly irrelevant, repository-related information be addressed?
- What would the role of the LSS Administrator be under a distributed system?
- How should advice from potential users of the LSS be provided for?

Dated at Rockville, Maryland, this 14th day of November, 1996.

For the Nuclear Regulatory Commission.

Original signed by
Andrew L. Bates
Advisory Committee Management Officer

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United States Nuclear Regulatory Commission

Office of Public Affairs
Washington, DC 20555
Phone 301-415-8200 Fax 301-415-2234
Internet: opa@nrc.gov

No. 96-162
FOR IMMEDIATE RELEASE
(Wednesday, November 20, 1996)

NRC LAUNCHES ON-LINE DISCUSSION OF ELECTRONIC LICENSING SYSTEM FOR HIGH-LEVEL WASTE REPOSITORY

The Nuclear Regulatory Commission has launched a discussion on the Internet as a first step toward updating plans for the Licensing Support System an electronic information management program to be used in the eventual licensing of a high-level radioactive waste repository.

The program, known as LSSNet, may be reached at this Internet address: http://lssnet.llnl.gov. It will continue through next May 20.

The dialogue proposed through LSSNet is not intended to replace formal comments on any proposed rule that may be developed to update the Licensing Support System. Instead, it will give interested persons a chance to provide their comments and questions to NRC before the text of any rule is developed. Through this process, NRC can analyze comments and questions, assess which questions arise most often, and then post a list of "frequently asked questions" and their answers. If LSSNet indicates changes to the existing Licensing Support System rule are necessary, a formal rulemaking will be initiated.

Using LSSNet, interested members of the public, potential users of the system, and the Licensing Support System Advisory Review Panel can communicate both with NRC and among themselves in defining issues and proposing alternatives before a new rulemaking proceeding formally begins.

The Licensing Support System Advisory Review Panel consists of representatives of NRC, the Department of Energy, the Securities and Exchange Commission, the State of Nevada, local governments in Nevada, the National Congress of American Indians and the nuclear industry. It was chartered under the Federal Advisory Committee Act to advise NRC on the design, development and use of the Licensing Support System.

In setting up LSSNet, NRC has built on an earlier project, RuleNet, which successfully engaged an on-line discussion of fire-protection regulation in November 1995. More detailed information on LSSNet is available in a notice in the November 20 edition of the Federal Register.

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SECY-97-154

July 22, 1997

FOR: The Commissioners

FROM: The LSS Senior Management Team

SUBJECT: RESOLUTION OF LICENSING SUPPORT SYSTEM (LSS) ISSUES AND DRAFT PROPOSED RULE, 10 C.F.R. PART 2, SUBPART J

PURPOSE:

To seek Commission approval of a proposed resolution of Licensing Support System (LSS) issues and to seek Commission approval of: (1) a Federal Register notice of proposed rulemaking amending 10 C.F.R. Part 2, Subpart J; and (2) a restructuring of the LSS Advisory Review Panel (LSSARP).

This paper also serves as the LSS Semi-annual Report for the period ending June 30, 1997, because all activities related to the LSS during that six month period were associated with resolving the issues covered in this paper.

BACKGROUND:

In SECY-96-178, Action Plan to Address Outstanding LSS Issues, the LSS Senior Management Team (SMT) presented for Commission approval a set of strategies designed to resolve the issues surrounding the LSS. The SMT proposed to (1) reassess the fundamental technological approach for the LSS to reflect the developments that have occurred since the formulation of the LSS concept, using pilot programs conducted by NRC and DOE which provide electronic access to a set of documents at individual Internet "home pages"; (2) consider what changes are necessary to the LSS rule, 10 C.F.R. Part 2, Subpart J; (3) attempt to maintain the essential features of the LSS rule that were negotiated by the parties to the negotiated rulemaking in 1989, including timely access to documents and document integrity; and (4) consider establishing a new mechanism for continuing technical coordination that would take the place of the existing LSSARP.

To elicit comments and suggestions on these issues, the LSS Administrator (LSSA) proposed conducting an Internet discussion, building upon the NRC's experience with Rulenet. The Commission approved the proposed strategies in an SRM dated October 8, 1996. An explanation of the issues and the availability of LSSNet were announced in a Federal Register notice published on November 20, 1996 (61 Fed. Reg. 59031) and in a press release.

DISCUSSION:

Technology Evaluation

As a demonstration of the potential for conducting the electronic document management for the HLW licensing proceeding in a vehicle other than a main frame computer, the NRC staff (with assistance from its principal contractor, The Center for Nuclear Waste Regulatory Analysis (CNWRA)), developed the LSS TESTBED. The LSS TESTBED is an Internet site containing approximately 250 documents of various lengths and complexity. The purpose of this activity was to demonstrate to the members of the LSSARP the potential benefits of eventually placing the LSS on the Internet. The LSS TESTBED does not have full LSS capabilities, as described in 10 C.F.R. Part 2, Subpart J, but it does function as a document retrieval system that allows searches based on author, date, title, or word or phrase. The LSS TESTBED was fairly well received by the participants and it demonstrated that the Internet approach was a reasonable approach. The principal complaint about the TESTBED was that NRC had not placed all of its high-level waste documents on the site, however that was not the purpose of the demonstration. The demonstration did indicate there were some problems to resolve and some protocols to establish to

ensure full access to system capabilities. Also, the test revealed that even beginning with an electronic copy of documents, some additional effort is still required before the documents can be placed on the Internet.

LSSNET

LSSNet presented an additional demonstration of the use of Internet. LSSNet was designed to allow the LSS Advisory Review Panel (LSSARP), other potential users of the LSS, and the public to communicate both with the NRC and among themselves, with a view toward defining LSS rulemaking issues, identifying alternatives to address those issues, and determining the extent of agreement on those alternatives. The goal was to develop a draft rule text through a consensual process.

During the past 9 months, the LSSNet site [http://lssnet.llnl.gov] has been visited approximately 3000 times, by 130 organizations in the United States and several (7) foreign countries. Activity was dominated by U.S. Government entities, which account for approximately one half of all activity at this site.

The use of Internet and commercially available software appear to promise to be a viable and more efficient and cost effective alternative to the LSS. Consequently, the SMT considered how these new technologies can be integrated into the LSS rule while still maintaining the primary functions of the LSS: 1) a mechanism for the discovery of documents before the license application is filed; 2) electronic transmission of filings by the parties during the proceeding; 3) electronic transmission of orders and decisions related to the proceeding; and 4) Access to an electronic version of the docket.

To address these issues, in Phase I of LSSNET the discussion was divided into seven topic areas:

Topic 1 - What are the costs and benefits of moving from a dedicated, centralized system to a distributed system based on the Internet?

Topic 2 - How should other improvements in computer technology be incorporated into the LSS?

Topic 3 - What provisions of the LSS rule will need to be changed to reflect the incorporation of new technologies?

Topic 4 - How should the backlog of "uncaptured", and possibly irrelevant, repository-related information be addressed?

Topic 5 - What would the role of the LSS Administrator be under a distributed system?

Topic 6 - How should advice from potential users of the LSS be provided for?

Topic 7 - Can DOE file an electronic application in hypertext?

The LSSNet Phase I discussions produced at least one concrete suggestion of a possible improved approach that could be accomplished with current technology and an Internet environment: a Department of Energy commenter suggested that the DOE license application could be submitted in hypertext. The commenter suggested that a hypertext application would in itself provide some of the functionality that had been promised from the LSS. That is, the license application would contain hypertext links to all pertinent references and supporting documentation.

The Department of Energy actually provided a demonstration to NRC staff of the potential of this approach by taking an existing Topical Report (which had already been reviewed by the NRC for technical content) and inserting hypertext links to supporting documentation so that it could be viewed in an Internet environment. The NRC staff who examined the demonstration thought that the idea showed promise, although technical protocols which would enable all participants to use the documents effectively would have to be developed.

In Phase II, based on the participant commentary in Phase I, the NRC proposed some specific alternatives for addressing the major issues of concern in the development of the LSS:

Topic 1 - Should the requirement for an LSS be eliminated?

Topic 2 - Should the requirement for an LSS be retained based on a distributed system?

Topic 3 - Should DOE have the option to submit an electronic license application with hypertext links to relevant documents?

After completion of Phase II, the third and final phase was initiated in April 1997 and ended on June 30, 1997. Phase III contained a draft version of a revised Part 2, Subpart J rule, showing proposed changes from the existing rule in highlighted and strike out text. The draft rule was based on eliminating the current requirement in 10 C.F.R. Part 2, Subpart J, for a centralized "Licensing Support System" administered by the NRC. The document submission requirements in Subpart J would be replaced by a requirement that potential parties to the repository licensing proceeding, including DOE and NRC, provide access to other potential parties to the electronic version of their documentary material. "Documentary material" was defined as "any material or other information that a party or potential party plans to produce either during discovery by subpoena or deposition during the licensing of a candidate site for a geologic repository". The scope of "documentary material" would still be guided by the Topical Guidelines. The existing requirement of certification by NRC that DOE had complied with these requirements six months before the license application is submitted would also be retained . The requirements for an electronic hearing docket would also be retained, as well as the Pre-License Application Presiding Officer to rule on requests for access to the individual websites. An Advisory Review Panel was retained for providing advice on electronic docket issues, but the requirement for an LSS Administrator would be eliminated. Comments were requested on the conceptual approach reflected in the draft rule, the specific provisions of the draft rule, and any other issues which should be addressed by the Commission, either in the rule or in the Statement of Considerations.

In discussing the LSSNet results, it must be acknowledged that LSSNet did not generate broad participation from members of the LSSARP (other than NRC and DOE) or the public. The following information summarizes the number of comments actually received in LSSNet, including one DOE message that was posted in two different areas:

Phase I (November 1, 1996-February 25, 1997): 41 NRC, 8 DOE, 2 Other Federal, 7 Local Government, 1 Native American

Phase II (March 1, 1997-March 31, 1997): 15 NRC, 3 DOE, 3 Local Government

Phase III (April 15, 1997-June 30, 1997): 1 NRC, 2 DOE, 9 Local Government

Although the numbers of comments are small, there does not appear to be a legitimate concern about the LSSNet process being the cause of this lack of participation. The LSSNet concept and the issues addressed in the SMT's Action Plan had been generally explored with the LSSARP at its May 1996 meeting. At that time, it was recognized that the units of State and Local governments on the LSSARP were necessarily curtailing their activities because of funding shortages, but they were interested in seeing how the Internet could be used to communicate as a Panel in lieu of the more costly face-to-face meetings. Prior to the beginning of LSSNet, the computer capability of all members of the LSSARP had been verified.

Furthermore, the lack of participation was itself a topic of discussion on LSSNet. Several methods that were suggested to generate more participation were pursued. For instance, to ensure that all LSSARP members were aware of the discussions to date and to solicit some responses to earlier comments, the LSSA mailed hard copies of all of the messages that had been posted to LSSNet to that date in Phase I. Therefore because all LSSARP members were thoroughly briefed at the outset and have had thorough notice of the issues that were being discussed on LSSNet, it is reasonable to interpret the lack of comment as tacit agreement with the approach outlined in the discussions and the draft rulemaking text

on LSSNet.

Therefore, after considering the comments that were received in LSSNet and internal comments of the NRC staff, the SMT considered several alternative approaches to amending the regulations in Subpart J of Part 2.

Option 1: Existing rule

This approach would not take advantage of current and future technology. It would require an enormously expensive custom designed system to be developed using old assumptions about technological standards and the universe of "relevant" material. Furthermore, given the large backlog that contains a substantial amount of documents that may no longer be relevant given the unanticipated length of time it has taken to develop the LSS, there is a substantial chance that it would be impossible for the DOE to achieve, and for the LSSA to certify, compliance with the provisions of the current rule.

Option 2: Subpart G

Since the NRC is developing ADAMS to provide an agency-wide electronic docket, it would be possible to rely on existing adjudicatory procedure rules (which will have to be updated to reflect the electronic docket). However, this approach would not provide pre-license application access to documents, and could result in a protracted discovery phase that would prevent meeting the statutory deadline for Commission decision on the license application.

Option 3: Existing rule using a distributed system

This approach would allow using linked individual Internet sites to serve as the LSS. However, this approach does not solve the problem discussed in Option 1 of the requirement to capture a huge backlog of material that may not have been maintained in a manner that would ever permit compliance with the rule, and which may not all be relevant to the future license application.

Option 4: Revised rule with more realistic document discovery approach

This approach would remove the requirement for a central LSS system and LSS Administrator, but would require each potential party to provide electronic availability of both the material it intends to rely upon to support its position and any material which does not support that material or that position, beginning in the pre-application phase (presided over by a Pre-License Application Presiding Officer), and would provide an electronic docket (with supervision of the Presiding Officer). Participation in the pre-license application phase would be one criterion for participating in the hearing. After the application is filed, in addition to the electronically available material, discovery would be limited, as in the current rule, to interrogatories and depositions.

The SMT believes that Option 4 provides the best solution for maintaining the basic functionality of the LSS conceptual design, while most flexibly accommodating current and future technological developments. The attached draft notice of proposed rulemaking (Attachment 1) contains a proposed rule implementing Option 4. The comments that were received on the LSSNet Phase III draft rule have been considered and adopted to the extent possible consistent with the Option 4 approach (which is a modification from the draft rule that was discussed in LSSNet Phase III). For reference, a copy of Part 2, Subpart J, showing proposed changes is included as Attachment 2.

The proposed rule eliminates the current prescriptive requirement in 10 C.F.R. Part 2, Subpart J, for a centralized "Licensing Support System" administered by the NRC and therefore also eliminates the requirement for an LSS Administrator. It requires that all potential parties, including the NRC and DOE, must make their documentary material available in electronic form to all other participants beginning in the pre-application phase. This requirement is stated without unduly restrictive technological specifications, in order to accommodate flexible implementation consistent with current or future technological developments. Documentary material would be defined as the material upon which a party intends to rely in support of its position in the licensing proceeding and any material which is relevant

to, but does not support that material or position, guided by the scope of the Topical Guidelines. For the purposes of this rule, the pre-application phase would begin on the date that the President submits the site recommendation to the Congress. This timing would allow access by each party to the other parties' documentary material enough before DOE submits the license application to allow some advance preparation of contentions and discovery requests, but late enough in the repository development process to provide meaningful information.

A Pre-License Application Presiding Officer would resolve any disputes over electronic access to documents during the pre-license application phase. Potential parties would be required to certify to the Pre-License Application Presiding Officer that they have complied with the requirement to provide electronic access to their documentary material. The requirements of the current rule for an electronic docket would be retained, as well as the limitations on the permissible forms of discovery after the application is filed.

Because the LSS has been eliminated, the requirement for an LSS Advisory Review Panel has been modified in the draft rule to accommodate a new purpose: to give advice to the Secretary of the Commission regarding format standards for electronic access to documents and for maintenance of the electronic docket for the HLW repository proceeding. This will require renaming of the advisory committee and redrafting of the committee charter. The Senior Management Team also considered the option of eliminating the requirement for an advisory committee chartered under the Federal Advisory Committee Act, and substituting a more informal voluntary users group. This group would be able to interact using Internet discussion areas (like LSSNet) as well as meetings, video conferences, or teleconferences. The Commission may wish to consider this alternative, especially in view of the constraints placed on the NRC by the Office of Management and Budget on the permissible number of advisory committees. If the Commission approves the alternative of a more informal users group, the draft rule can be easily modified to eliminate the requirement for an advisory committee, and explain the concept of a users group in the Statement of Considerations.

The Chief Administrative Judge of the Atomic Safety and Licensing Board Panel has expressed some preliminary concerns regarding the concepts in the proposed rule. His concerns are: 1) the proposed rule provides substantially less access to discovery material than the current rule; 2) the lack of independent oversight for the discovery database; 3) reliance on Internet-based technology; and 4) the perception that the NRC may be seen as dealing unfairly in the HLW licensing proceeding. These concerns center around the fairness of substituting a new rule, which more narrowly defines documentary material, for the current rule, which would appear to offer access to a much larger database of discovery materials. However, this appearance is deceptive, because of the extreme unlikelihood of successful implementation of the current rule. Therefore, the SMT believes that the attached draft proposed rule (Option 4) offers the most practical, flexible, and achievable arrangement to offer at least some pre-license application access to documents.

RESOURCES:

The FY 1999 Internal Program/Budget Review Proposal is based on implementing this proposed rulemaking and includes approximately 1 FTE and $200K in FY 1998, 2 FTE and $400K in FY 1999, and 2 FTE and $885K per year in FY 2000 and FY 2001.

RECOMMENDATION:

The Senior Management Team recommends that the Commission approve the attached Federal Register notice.

COORDINATION:

The Office of the General Counsel has no legal objection.

The Chief Information Officer has no objection to this paper.

The Chief Financial Officer has no objection to the resource estimates contained in this paper.

LSS Senior Management Team

John T. Greeves

Arnold E. (Moe) Levin

William J. Olmstead

Attachments:

1. **Draft Federal Register Notice**
2. **Part 2, Subpart J comparative text**

Return to References

SECY-97-154, Attachment 1

NUCLEAR REGULATORY COMMISSION
10 C.F.R. PART 2

RIN _____

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository (HLW proceeding). The proposed revisions are intended to allow application of technological developments that have occurred since the original rule was adopted in 1989, while achieving the original goals of facilitating the Commission's ability to comply with the schedule for the Commission's decision on the construction authorization for the repository contained in Section 114(d) of the Nuclear Waste Policy Act, providing for a thorough technical review of the license application, and providing for equitable access to information for the parties to the hearing.

DATES: Submit comments by [75 DAYS AFTER PUBLICATION]. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Rulemakings and Adjudications Staff. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Single copies of this proposed rulemaking may be obtained by written request to Distribution and Services Section, Printing, Graphics and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, or by telefax to (301) 415-2260. For information on submitting comments electronically see the discussion under Electronic Access in the Supplementary Information section. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated in the discussion under Electronic Access.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415-1641, e-mail KLW@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The existing procedures for licenses to receive high-level radioactive waste at a geologic repository were developed to address the Nuclear Regulatory Commission's concern regarding how best to review the DOE license application for a first-of-a-kind high-level radioactive waste (HLW) repository during the 3 year time period dictated by Section 114(d) of the Nuclear Waste Policy Act. The Commission believed it necessary to reduce the time normally spent on the discovery process at the start of a licensing proceeding and the time-consuming service of documents during the proceeding if the Commission were to reach its decision within the allotted time. The Licensing Support System (LSS) concept, an electronic information management system, was created to achieve this time reduction by making the information and data supporting a DOE application available, simultaneously in a centralized database to all

interested parties before the application is submitted and formal NRC review begins. Emerging information management technologies for issue identification, electronic storage and retrieval, and electronic mail were recommended for these functions to help achieve the objectives of more effective and efficient review.

The Commission employed the technique of negotiated rulemaking to develop the regulations governing the development and use of the LSS. Negotiated rulemaking is the process by which the agency and the interests affected by a rulemaking meet to attempt to reach a consensus on a draft proposed rule. If a consensus is reached, the agency publishes the negotiated rule as the agency's proposed rule. The Commission selected the negotiated rulemaking approach to address the LSS issue for several reasons. In 1987, the idea of use of an electronic information management system in a Commission adjudicatory proceeding was novel, not only for the Commission, but in general. Therefore, the development of the rules for the use of such a system would benefit from discussion and joint problem solving by those who might ultimately use the system and had experience with the Commission's traditional adjudicatory process. Furthermore, the potential users of the LSS possessed unique information that would be important to the design of the system, such as their computer capability and the amount and types of relevant documents that they might generate. In addition, the potential for consensus was enhanced by the fact that the LSS rule focused on procedures for conducting the licensing process, that might benefit all parties, rather than focusing on substantive technical criteria for a licensing process. Finally, the success of the LSS concept depended upon potential parties voluntarily complying with the licensing process for document identification and submission in the period before the DOE license application was submitted. Therefore, the involvement of interested parties in the development of the provisions to govern the use of the LSS was essential.

The Commission initiated the negotiated rulemaking in August 1987, and the negotiating committee--composed of State, local, and tribal governments, industry representatives, NRC, DOE, and environmental groups--completed its work in July 1988. All the parties on the negotiating committee, except the industry coalition, agreed on the text and supplementary information of a draft proposed rule. However, even the one dissenting party, the industry representative, had been a full and active participant in the drafting of the regulatory text and supporting information. Industry did not join the final consensus at the end of the process based on its belief that the use of a new technology in the licensing process would not prove cost-beneficial. At that time, the cost of the LSS was estimated by DOE to be in the $200 million range. The Commission, recognizing the agreement among the other parties on the negotiating committee, decided to publish the negotiated draft proposed rule as the Commission's proposed rule in November 1988. Because of this effort, the final LSS rule (10 C.F.R. Part 2, Subpart J), "Procedures Applicable to Proceeding for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository", was promulgated on April 24, 1989 (54 Fed. Reg. 14925).

The LSS rule assigned the LSS Administrator (LSSA) function to NRC which would be responsible for the management, administration, operation and maintenance of the LSS; gave DOE responsibility for the design, development, and implementation of the LSS; and established the charter of the LSS Advisory Review Panel (LSSARP) to provide consensus guidance on the design and development of the LSS to both NRC and DOE. The LSS was intended to provide a central, shared, federally funded database of licensing information beginning in 1995, the year in which DOE was expected to submit its application for a construction permit for the repository. The Commission adopted minor amendments further clarifying these procedures in a final rule published on February 26, 1991 (56 Fed. Reg. 7787).

The Licensing Support System Administrator (LSSA) was appointed in January 1989. The LSSARP was formed, holding its first meeting in December 1989. Also in December 1989, well before any serious development work could be started on the LSS, the Department of Energy revised its repository program schedule to extend its anticipated license application date from 1995 to 2001.The LSS development schedule was consequently extended as well.

II. Discussion

The development of the LSS that was devised in the original procedural rules in 10 C.F.R. Part 2,

Subpart J, has not been accomplished during the time that has passed since adoption of the rule. Many delays and changes in personnel and program structure have plagued the Department of Energy's efforts to develop the LSS. Budgetary shortfalls and the unanticipated length of time that it has taken to develop the licensing application for the repository not only delayed the development of the LSS, but also resulted in several additional years' accumulation of potential licensing information.

Because of the length of time involved, however, and the narrowing of the repository development program, much of the early material which was thought at the time of the rule development to be relevant may no longer be relevant to the actual licensing proceeding which may not begin until about 2002. Also because of the extended period of time it has taken to develop the LSS for DOE's use as a document management system, it appears that all accumulated documents may not have been identified and maintained properly for tracking of important repository development decisions. In addition, since document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture all the material originally required to be placed in the LSS is substantially larger than originally assumed. In order for the current Subpart J rules to apply, the LSSA must certify that the DOE has complied with the requirement to enter all relevant documents in the LSS. Therefore, all of these factors combine to produce the high likelihood that the current rule cannot be implemented as originally envisioned. If not, then 10 C.F.R. Part 2, Subpart J, will no longer apply. Instead, Subpart G, the generally applicable procedures for licensing proceedings, will apply, and there will be no pre-license application access to documents at all.

While the development of the LSS has remained stalled, the state of technology in document automation and retrieval has overtaken the technology of 1986 on which the original LSS was to be based. The use of computers to generate and maintain the complex documents of a party in litigation is widespread and commonplace. The Internet is universally availability to tie disparate and geographically dispersed systems together. Readily available commercial software applications can perform the document management functions of the LSS. Therefore, the centralized LSS envisioned at the time the LSS rule was developed has become obsolete, and the enormous expense of designing and maintaining a stand-alone system as required by the current rules appears to be an unjustified expense, especially when it appears unlikely that the rule will be able to be implemented successfully even if the LSS is created.

Consequently, the Commission is proposing to amend its rules to allow more flexibility to incorporate the advantages of new information management technologies in the procedural rules for the licensing of the geologic repository, eliminating the LSS as a uniquely designed stand-alone system, while still maintaining the primary functions of the LSS: 1) a mechanism for the discovery of documents before the license application is filed; 2) electronic transmission of filings by the parties during the proceeding; 3) electronic transmission of orders and decisions related to the proceeding; and 4) access to an electronic version of the docket. The Commission believes that the proposed rule will continue to support the model timeline schedule for conducting the licensing proceeding within the 3 year statutory period that was published in the Statement of Considerations for the original 10 C.F.R. Part 2, Subpart J rule, published on April 14, 1989 (54 Fed. Reg. 14925, 14939).

The proposed rule eliminates the current prescriptive requirement in 10 C.F.R. Part 2, Subpart J for a centralized "Licensing Support System" administered by the NRC and therefore also eliminates the requirement for an LSS Administrator to assure the viability of the central database. To replace these features of the existing rule, the proposed rule requires that all potential parties, including the NRC and DOE, must make their documentary material available in electronic form to all other participants beginning in the pre-license application phase. This requirement is stated without unduly restrictive technological specifications, in order to accommodate flexible implementation consistent with current or future technological developments.

Documentary material would be defined as the material upon which a party intends to rely in support of its position in the licensing proceeding and any material which is relevant to, but does not support, that material or that party's position. For the purposes of this rule, the pre-application phase would begin on the date that the President submits the site recommendation to Congress. This timing would allow access to the parties' documentary material enough before DOE submits the license application to allow advance preparation of contentions and discovery requests before the license application, but late enough

in the repository development process to provide meaningful information.

A Pre-License Application Presiding Officer would resolve any disputes over electronic access to documents during the pre-license application phase. Potential parties would be required to certify to the Pre-License Application Presiding Officer that they have complied with the requirement to provide electronic access to their documentary material. The requirements of the current rule for an electronic hearing docket would be retained, as well as the limitations on the permissible forms of discovery after the application is filed.

Because the concept of the LSS has been replaced in the draft rule, the requirement for an LSS Advisory Review Panel has been modified in the draft rule to accommodate a new purpose: to give advice to the Secretary of the Commission regarding standards and procedures for electronic access to documents and for maintenance of the electronic docket. This will require renaming of the advisory committee and redrafting of the committee charter.

III. Section-by-Section Description of Changes

Section 2.1000 Scope of subpart - The reference to § 2.709 is removed because it requires compliance with § 2.708, a section which does not apply to this subpart.

Section 2.1001 Definitions

ASCII File- this definition has been removed and is no longer used in the rule. Prescriptive references to specific technical standards are being removed to allow flexible implementation consistent with developing technology.

Documentary material - the definition of documentary material is revised to cover material upon which a party, potential party, or interested governmental participant intends to rely and cite in support of its position in the licensing proceeding and any material or other information which is relevant to, but does not support, that material or information or that party's position. This definition is used in the rule in § 2.1003 to define what material must be provided in electronic form for access beginning in the pre-license application phase. Therefore the term "documentary material" is intended to describe the most important body of material and is defined clearly to require that all parties include electronic access to any material in their possession which does not support their position in the licensing proceeding, as well as providing access to the material which does support their position. The scope of the documentary material remains governed by the topical guidelines.

Electronic docket - a new definition is added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC adjudicatory docket materials in the licensing proceeding.

Integrated electronic information - a new definition is added to describe material made available in electronic form to potential parties, parties, or interested governmental participants to the licensing proceeding for the high-level waste geologic repository, either as part of the NRC's pre-license application electronic docket or electronic docket or pursuant to electronic access to documentary material made available by individual potential parties, parties, and interested governmental participants. This is a term for the information access that is replacing the LSS in this rule.

LSS Administrator - this term is being eliminated from the rule because the concept of the LSS is also being removed. The Pre-license Application Presiding Officer will resolve disputes about electronic access to documents in the pre-license application phase.

Party - this definition is being revised to add "affected unit of local government", as that term is defined in the Nuclear Waste Policy Act of 1982, as amended, and also to refer to that act for the definition of affected Indian tribe. In addition, any affected unit of local government shall file a list of contentions, as shall the host State and any affected Indian Tribe.

Potential party - this definition is being revised to remove the reference to the LSS, and to substitute the

term integrated electronic information to describe the material to which the potential party will be given access.

Pre-license application electronic docket - a new definition is added to describe NRC's electronic information system to receive, distribute, store and maintain NRC pre-license application docket materials during the pre-license application phase.

Pre-license application phase - this definition is being specified for the purposes of this rule to begin on the date that the President submits the site recommendation to the Congress. This date has been chosen to allow access to the potential parties' documentary material enough before the license application to allow advance preparation of contentions and discovery requests before the application is filed, but late enough in the repository development process to provide meaningful information.

Searchable full text - this definition is being revised to remove references to ASCII and to the LSS.

Topical Guidelines - a new definition is being added to describe the set of topics set forth in Regulatory Guide 3.69 which are intended to guide the scope of documentary material under this subpart.

Section 2.1002 is being removed because the LSS is no longer required in the rule. Access to integrated electronic information will provide the major functions which the LSS was designed to provide. Subsections 2.1002(c) and (d) which state that participation by the host State in the pre-application phase will not affect its disapproval rights, and that this subpart shall not affect any participant's independent right to receive information, are being moved and redesignated as §§2.1003(a)(2) and (3).

Section 2.1003 is being revised to describe information that is required to be made available electronically by all potential parties, parties, and interested governmental participants (including the NRC and DOE). This information must be made available to all other participants beginning in the pre-license application phase, which starts at the date of the President's submission of the site recommendation to the Congress. The requirements of the rule are being simplified to require only that access to an electronic file be provided, and all references to specific formats are being removed to allow flexibility in implementation. The Commission intends that a potential party, party, or interested governmental participant might offer electronic access to its documentary material in a number of different ways, including by providing its documents either to the NRC or to the DOE, to have the NRC or the DOE maintain the documents for electronic access. Although the draft rule requires that documentary material be made available electronically beginning on the date of the President's site recommendation to the Congress, the Commission would encourage the earliest feasible availability of documentary material in order to enhance the future smooth operation of the licensing proceeding. The subsections relating to evaluations and certifications by the LSS Administrator are being removed because the LSS (and LSSA) concept is being removed. Section 2.1010 states that the Pre-License Application Presiding Officer will resolve any disputes relating to electronic access to documents in the pre-license application phase. Accordingly, the subsections which stated that the application would have to be docketed under subpart G if the LSSA did not certify compliance are removed, and subpart J (including specifically referenced sections of subpart G) now unconditionally embodies the rules of procedure for the HLW licensing proceeding.

Section 2.1004 has been revised to provide procedures for providing access to a document that has not previously been provided in electronic form, deleting previous references to the LSS and the LSSA.

Section 2.1005 has been revised to delete reference to the LSS and to add an exclusion of readily available references, such as journal articles or proceedings, which may be subject to copyright.

Section 2.1006 has been revised to refer to providing a document in electronic form and to delete references to the LSS and the LSSA.

Section 2.1007 has been revised to refer to providing systems for access to integrated electronic information rather than providing terminals for access to the LSS. These systems must be maintained by DOE and NRC at the locations specified in the current version of the rule (except for the Uranium

Recovery Field Office which no longer exists), beginning in the pre-license application phase.

Section 2.1008 is being revised to allow electronic access to the integrated electronic information to any person who complies with the requirements of subpart J, including the requirement in § 2.1003 to make documentary material available, and who agrees to comply with the orders of the Pre-license Application Presiding Officer. The previous requirement to petition to the Pre-license Application Presiding Officer is being removed.

Section 2.1009 is being revised to delete references to the LSS and the LSSA, and to refer instead to the responsibility to provide electronic files. The responsible official for each potential party must certify to the Pre-License Presiding Officer that procedures to comply with § 2.1003 have been implemented and that its documentary material has been made electronically available. There is a new requirement to update the certification at the request of the presiding officer, which replaces a previous requirement to provide this certification at 6 month intervals.

Section 2.1010 is being revised to delete references to the LSS and the LSSA and to refer instead to electronic access. The reference to petitions for access has been removed to conform to removal of this requirement.

Section 2.1011 has been revised reflect the fact that the electronic availability of documentary material that is specified in this rule no longer requires special equipment. The name and functions of the LSS Advisory Review Panel have been amended to delete reference to the LSS and substitute the purpose of arriving at standards and procedures to facilitate the electronic access to material and to the electronic docket. Because of the broad and non-prescriptive requirements regarding providing electronic files in this rule, the Advisory Review Panel will be very useful in discussing standards and procedures to ensure that all participants are able to access the electronic information.

Section 2.1012(a) has been revised to allow the Director of NMSS to determine that the application is not acceptable if is not able to be accessed through the electronic docket. Sections 2.1012(b)(1) has been revised to substitute "integrated electronic information" for "Licensing Support System" so that a person who has had access to the integrated electronic information shall not be granted party status in the licensing proceeding if it cannot demonstrate compliance with the requirements of § 2.1003. Section 2.1012 (d) has been revised to substitute "pre-license application electronic docket or electronic docket" for "Licensing Support System" to indicate that access to either the pre-license application electronic docket or the electronic docket may be suspended or terminated for failure to comply with the orders of the Pre-License Application Presiding Officer or the Presiding Officer.

Section 2.1013 has been revised to delete references to the LSS and LSSA and refers to the provision of information in electronic form. The requirement in § 2.1013(c)(5) to file one signed paper copy of each filing with the Secretary of the NRC has been removed because the electronic docket will not require signed paper copies.

Section 2.1014(c)(4) deletes a reference to the LSS and makes the failure of a petitioner to participate in the pre-license application phase a criterion in considering whether to grant a petition to intervene.

Section 2.1017 uses the unavailability of the "electronic docket" instead of the LSS as a justification for extending the computation of time in the proceeding.

Sections 2.1018 and **2.1019** are revised to delete references to the LSS and instead to refer to providing documents electronically.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld or connecting to the NRC interactive rulemaking web site, "Rulemaking Forum." The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or

directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software indicators should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the "Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

You may also access the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555-0001, telephone (301) 415-5780; e-mail AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415-5905; e-mail CAG@nrc.gov.

Environmental Impact: Categorical Exclusion

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

Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1989 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level),

Washington, DC. Single copies of the analysis may be obtained from Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 415-1641.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the Addresses heading.

Regulatory Flexibility Certification

This proposed rule will not have a significant economic impact upon a substantial number of small entities. The amendments modify the Commission's rules of practice and procedures. The license applicant for the HLW repository will be the Department of Energy, which would not fall within the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, in the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 C.F.R. Part 121, or in the NRC's size standards published December 9, 1985 (50 Fed.Reg. 50241). Although a few of the intervenors in the HLW proceeding are likely to fall within the pertinent Small Business Act definition, the impact on intervenors or potential intervenors will not be significant. The rule is being amended to allow more widely available electronic access to information before the license application is filed. Participants will be required to make their own documentary material available electronically, but that requirement is stated in a manner that allows flexibility in implementation. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this proposed rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rules in 10 C.F.R. Chapter 1, §§ 50.109, 72.62, and 76.76, do not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in those rules.

List of Subjects in 10 C.F.R. Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, 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. 553, the Nuclear Regulatory Commission is proposing to adopt the following amendments to 10 C.F.R. Part 2.

PART 2-RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The Authority citation for Part 2 continues 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. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); 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. 161b, i, o, 182, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 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 2.764 and Table 1A of Appendix C

also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). 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). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). 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. Section 2.1000 is revised to read as follows:

§ 2.1001 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 § 2.101(f)(8) or § 2.105(a)(5) of this part. The procedures in this subpart take precedence over the 10 C.F.R. Part 2, 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, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790.

3. Section 2.1001 is amended by removing the definitions of ASCII File and LSS Administrator, adding definitions of electronic docket and integrated electronic information, and revising the definitions of documentary material, potential party, and pre-license application phase to read as follows:

§ 2.1001 Definitions.

* * * * *

Documentary material means any material or other information upon which a party, potential party, or interested governmental participant intends to rely and to cite in support of its position in the proceeding 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 any material or other information which is relevant to, but does not support, that material or information or that party's position. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

* * * * *

Electronic docket means the NRC information system that receives, distributes, stores, and retrieves the Commission's adjudicatory docket materials.

* * * * *

Integrated electronic information means the material that is made available electronically to parties, potential parties, and interested governmental participants to the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, as part of the electronic docket or electronic access to documentary material, beginning in the pre-license application phase.

* * * * *

Party for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 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, affected unit of local government, or affected Indian Tribe shall file a list of contentions in accordance with the provisions of §§ 2.1014(a)(2) (ii) and (iii) of this subpart.

* * * * *

Potential party means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d) of this subpart, is given access to the integrated electronic information and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to § 2.1010 of this subpart.

Pre-license application electronic docket means the NRC's electronic information system that receives, distributes, stores, and maintains NRC pre-license application docket materials during the pre-license application phase.

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. For the purpose of this subpart, this period begins on the date that the President submits the site recommendation to the Congress pursuant to section 114(a)(2)(A) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10134(a)(2)(A)). .

* * * * *

Searchable full text means the electronic indexed entry of a document that allows the identification of specific words or groups of words within a text file.

Topical Guidelines means the set of topics set forth in Regulatory Guide 3.69, Topical Guidelines for the Licensing Support System, which are intended to guide the scope of "documentary material".

4. Section 2.1002 is removed and reserved and §§ 2.1002(c) and (d) are moved and redesignated §§ 2.1003(a)(2) and (3), as set forth below.

5. Section 2.1003 is revised to read as follows:

§ 2.1003 Availability of material.

(a) Beginning in the pre-license application phase, subject to the exclusions in § 2.1005 of this subpart and paragraphs (b) and (c) of this section, each potential party, interested governmental participant or party, shall make available to other potential parties, interested government participants or parties -
(1) An electronic file 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. Contemporaneous with the production of the electronic file will be an authentication statement that indicates where an authenticated image copy of the document can be obtained.
(2) The participation of the host State in 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).
(3) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

(b) (1) Each potential party, interested governmental participant, or party shall make available in electronic image form, subject to the claims of privilege in § 2.1006, graphic-oriented documentary material that includes, raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, or hand written. Text embedded within these 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; Text 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 shall make available in an electronic file, subject to the claims of privilege in § 2.1006, only a bibliographic header for each item of documentary material that is not suitable for image or searchable full text.

(c) Each potential party, interested governmental participant, or party shall make available electronically a bibliographic header for each documentary material-
(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 § 73.21 of this chapter.

(d) 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 tne Site Characterization Analysis, and the Safety Evaluation Report, shall be made available in electronic form by the respective agency that generated the document.

6. Section 2.1004 is revised to read as follows:

§ 2.1004 Amendments and additions.

Any document that has not been provided to other parties in electronic form must be identified in an electronic notice and made available for inspection and copying by the potential party, interested governmental participant, or party responsible for the submission of the document within two days after it has been requested unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding; provided, however, that the time allowed under this paragraph will be stayed pending Officer action on a motion to extend the time.

7. Section 2.1005 is revised to read as follows:

§ 2.1005 Exclusions.

The following material is excluded from the requirement to provide electronic access , either pursuant to § 2.1003 of this subpart, or through derivative discovery pursuant to § 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) Preferences cited in contractor reports that are readily available;
(g) Classified material subject to subpart I of this part;
(h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.

8. Section 2.1006 is revised to read as follows:

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(c) of this subpart, the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 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 Presiding Officer or the Presiding Officer, must be provided in electronic form by the party, interested governmental participant, or potential party that asserted the claim to-
(1) The other participants; or
(2) To the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under § 2.1010(b) or § 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 provided for electronic access pursuant to §§ 2.1003(a) of this subpart.

9. Section 2.1007 is being revised to read as follows:

§ 2.1007 Access.

(a) (1) A system to provide electronic access to the integrated electronic information 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, beginning in the pre-license application phase.
(2) A system to provide electronic access to the integrated electronic information 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 beginning in the pre-license application phase.
(3) The systems for electronic access specified in paragraphs (a)(1) and (a)(2) of this section shall include locations at Las Vegas, Nevada; Reno, Nevada; Carson City, Nevada; Nye County, Nevada; and Lincoln County, Nevada.

(b) Public availability of paper and electronic copies of the records, 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) Documents to which electronic access has been provided by other parties, potential parties, or interested governmental participants pursuant to this subpart shall not be considered as agency records of the Nuclear Regulatory Commission or the Department of Energy unless and until they have been entered into the docket of the proceeding pursuant to §2.702 for purposes of the Freedom of Information Act (FOIA), 5 U.S.C. 552, if such documents remain under the custody and control of the agency or organization that identified the documents. Requests for access pursuant to the FOIA to documents submitted by a Federal agency shall be transmitted to that Federal agency.

10. Section 2.1008 is revised to read as follows:

§ 2.1008 Potential parties.

Any person who complies with the regulations set forth in this subpart, including § 2.1003 and agrees to comply with the orders of the Pre-License Application Presiding Officer designated pursuant to § 2.1010 of this subpart may have electronic access to the integrated electronic information made available pursuant to this subpart in the pre-license application phase.

11. Section 2.1009 is revised to read as follows:

§ 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 responsibility to provide electronic files of documentary material ;
(2) Establish procedures to implement the requirements in § 2.1003 of this subpart;
(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material;
(4) Ensure that all documents carry the submitter's unique identification number;
(5) Cooperate with the advisory review process established by the NRC pursuant to § 2.1011(c) of this subpart.

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer 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 § 2.1003 of this subpart has been identified and made electronically available. Upon order of a duly appointed presiding officer, the responsible official shall update this certification.

12. Section 2.1010 is revised to read as follows:

§ 2.1010 Pre-License Application Presiding Officer.

(a) (1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter (Pre-License Application Presiding Officer) to rule on disputes over the electronic availability of documents during the pre-license application phase, including disputes relating to privilege, and disputes relating to the implementation of the recommendations of the Advisory Review Panel established under § 2.1011(e).
(2) The Pre-License Application Presiding Officer shall be designated before the integrated electronic information is scheduled to be available.
(b) The Pre-License Application Presiding Officer 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 under § 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 nondisclosure) 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 § 73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for 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 § 2.205. 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 production under § 2.1005 of this subpart, the potential party, interested governmental participant, or party who asserted the claim of withholding must make the document available in accordance with the provisions of this subpart within two days .
(d) The service of all pleadings and answers, orders, and decisions during the pre-license application

phase shall be made according to the procedures specified in § 2.1013(c) of this subpart and entered into the pre-license application electronic docket.
(e) The Pre-License Application Presiding Officer shall possess all the general powers specified in §§ 2.721(c) and 2.718.
(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

13. Section 2.1011 is revised to read as follows:

§ 2.1011 Management of Electronic Information .

(a) Electronic document production and the electronic docket will be subject to the provisions of this subpart.

(b) The NRC, DOE, parties, and potential parties participating in accordance with the provisions of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(c) (1) The Secretary of the Commission shall establish an Advisory Review Panel composed of the Advisory Committee members identified in paragraph (c)(2) of this section who wish to serve. The Secretary 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 NRC HLW Licensing Support System Advisory Committee.
(2) The Advisory Committee membership will initially include the State of Nevada, a coalition of affected units of local government in Nevada who were on the NRC High-Level Waste Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups who were on the NRC High-Level Waste Licensing Support System Advisory Committee and such other members as the Commission may from time to time designate to perform the responsibilities in paragraph (d) of this section.

(d) (1) The Advisory Review Panel shall provide advice to-
(i) NRC on the fundamental issues of the computer system necessary to use the integrated electronic information effectively under paragraph (b) of this section; and
(ii) The Secretary of the Commission on the operation and maintenance of the electronic docket under the Commission's Rules of Practice (10 C.F.R. Part 2).
(2) The responsibilities of the Advisory Review Panel shall include advice on-
(i) Format standards for providing electronic access to documentary material to the parties, interested governmental participants, or potential parties;
(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) Other duties as specified in this subpart or as directed by the Secretary of the Commission.

14. Subsections 2.1012(a), (b)(1), and (d) have been revised to read as follows:

§ 2.1012 Compliance.

(a) In addition to the requirements of § 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 Secretary of the Commission determines that it can not be effectively accessed through the Commission's electronic docket.

(b) (1) A person, including a potential party given access to the integrated electronic information under this subpart, shall not be granted party status under § 2.1014 of this part, or status as an interested governmental participant under § 2.715(c) of this part, if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 of this subpart at the time it requests participation in the high-level waste licensing proceeding under either § 2.1014 or § 2.715(c) of this part.

* * * * *

(d) Access to the pre-license application electronic docket or electronic docket may be suspended or terminated by the Pre-License Application Presiding Officer or the Presiding Officer for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-License Application Presiding Officer or the Presiding Officer or the requirements of this subpart.

15. Section 2.1013 is revised to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

(a) (1) Pursuant to § 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 in an electronic form to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, the Secretary, upon determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket 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 made available to the parties in electronic form before the commencement of that portion of the hearing in which the exhibit will be offered. The electronic docket 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 electronic docket 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 Presiding Officer, parties, 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 completed 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) All Presiding Officer and Commission issuances and orders will be transmitted electronically to the parties and interested governmental participants.

(d) Online access to the electronic docket, including a Protective Order File if authorized by a Presiding Officer, shall be provided to the Presiding Officer, the representatives of the parties and 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.

15. Subsection 2.1014(c)(4) is revised to read as follows:

§ 2.1014 Intervention.

* * * * *

(c)

* * * * *

(4) The failure of the petitioner to participate as a potential party in the pre-license application phase.

16. Section 2.1017 is revised to read as follows:

§ 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, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the electronic docket 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.

17. Subsections 2.1018(a)(1) and (e) are revised to read as follows:

§ 2.1018 Discovery.

(a) (1) 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 made available pursuant to § 2.1003 of this subpart; entry upon land for inspection, access to raw data, or other purposes pursuant to § 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 § 2.1003 (b) and (c) of this subpart; depositions upon oral examination pursuant to § 2.1019 of this subpart; requests for admission pursuant to § 2.742 of this subpart; informal requests for information not made electronically available, such as the names of witnesses and the subjects they plan to address; and interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

* * * * *

(e) A party, potential party, or interested governmental participant who has made available in electronic form all material relevant to any discovery request 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)

* * * * *

(2)

* * * * *

(3)

* * * * *

18. Subsections 2.2019(d), (e), and (i) are revised to read as follows:

§ 2.1019 Depositions.

* * * * *

(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 an electronic copy of the deposition to the Secretary for entry into the electronic docket.

(e) Where the deposition is to be taken on written questions as authorized under § 2.1018(a)(2) 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 and interested governmental participant 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 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 in electronic form to the Secretary for entry into the electronic docket as in the case of a deposition on oral examination.

* * * * *

(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 electronic 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 made available electronically. All documents that are not identical to documents already made available electronically , 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 the initial requirements of § 2.1003 to be made available electronically , 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 provided electronically.
(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 or interested governmental participant requests that have not already been provided electronically 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 provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.
(6) The deposing party or interested governmental participant 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 someone other than a party or interested governmental participant.

Dated at Rockville, MD, this _____ day of _____ 1997.

FOR THE NUCLEAR REGULATORY COMMISSION.

Return to References

SECY-97-154, Attachment 2

Subpart J - Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

§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 §2.101(f)(8) or §2.105(a)(5) of this part. The procedures in this subpart take precedence over the 10 CFR Part 2, subpart G, rules of general applicability, except for the following provisions: § §2.702, 2.703, 2.704, 2.707, ~~2.709,~~ 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, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790.

§2.1001 - Definitions. ~~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 not become a final document due to either a decision not to finalize the document or the passage of a substantial period of time in which no action has been taken on the document.

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 ~~the that is relevant to, or likely to lead to the discovery of information that is relevant to, licensing of the likely candidate site for a geologic repository.~~ upon which a party, potential party, or interested governmental participant intends to rely and to cite in support of its position in the proceeding 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 any material or other information which is relevant to, but does not support, that material or information or that party's position. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

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

Electronic Docket means the NRC information system that receives, distributes, stores, and retrieves the Commission's adjudicatory docket materials.

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 §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.

Integrated electronic information means the material that is made available electronically to parties, potential parties, and interested governmental participants to the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, as part of the electronic docket or electronic access to documentary material, beginning in the pre-license application phase.

~~LSS Administrator means the person within the U.S. Nuclear Regulatory Commission responsible for administration, management, and operation of the Licensing SupportSystem. 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 the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), ~~and~~ any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), ~~in accordance with §60.63(a) of this chapter,~~ and a person admitted under §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 , affected unit of local government, or affected Indian Tribe shall file a list of contentions in accordance with the provisions of §§2.1014(a)(2) (ii) and (iii) 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 §2.1021(d) of this subpart, is given ~~granted~~ access to the ~~Licensing Support System~~ integrated electronic information and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to §2.1010 of this subpart.

Pre-license application electronic docket means the NRC's electronic information that receives, distributes, stores, and maintains NRC pre-license application docket materials during the pre-license application phase.

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. For the purpose of this subpart, this period begins on the date that the President submits the site recommendation to the Congress pursuant to section 114(a)(2)(A) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C 10134(a)(2)(A)).

Pre-License Application Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the pre-license application phase with jurisdiction specified at the time of designation.

Preliminary draft means any nonfinal document that is not a circulated draft.

Presiding Officer means one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority in the matter, designated in the notice of hearing to preside.

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.

Topical Guidelines means the set of topics set forth in Regulatory Guide 3.69, Topical Guidelines for the Licensing Support System, which are intended to guide the scope of "documentary material".

~~§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 § 2.1006 or excluded under § 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~~ Availability of material ~~to the LSS~~.

(a) Beginning in the pre-license application phase, ~~S~~ s ubject to the exclusions in §2.1005 of this subpart and paragraphs (~~c~~ b) and (~~d~~ c) 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~~ make available to other potential parties, interested government participants or parties -
(1) ~~Subject to paragraph (a)(3) of this section, an~~ An electronic ~~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~~. Contemporaneous with the production of the electronic file will be an authentication statement that indicates where an authenticated image copy of the document can be obtained.
~~(2) An image, a bibliographic header, and, if available, an ASCII file, no later than six months before the license application is submitted under § 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, 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) of this section that were acquired from a person that is not a potential party, party, or interested governmental participant.~~
[moved] (2) 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).
(3) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

(b) ~~Subject to the exclusions in § 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 by other participants.~~
~~(2) An ASCII file, an image, and a bibliographic header no later than six months before the license application is submitted under § 60.22 of this chapter for alldocumentary 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 make available in electronic image form ~~submit~~, subject to the claims of privilege in §2.1006~~, an image and a bibliographic header, in a time frame to be established by the access protocols under § 2.1011(d)(10) of this subpart, for all graphic oriented documentary material. G~~ g raphic-oriented documentary material that includes, raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, or 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 in any form of image.~~ Text embedded within these 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; Text 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 § 2.1011(d)(10) of this subpart,~~ shall ~~submit~~ make available in an electronic file , subject to the claims of privilege in § 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 material 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~~ c) Each potential party, interested governmental participant, or party shall ~~submit~~ make available electronically a bibliographic header for each documentary material-
(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 § 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~~ d) 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~~ made available in electronic form by the respective agency that 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 NRC 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 § 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 any actions necessary to achieve substantial compliance pursuant to paragraph (h)(1) of this section.~~
~~(iii) The LSS administrator shall circulate each evaluation prepared pursuant to paragraph (h)(2)(i) of this section, and the written report prepared pursuant to paragraph (h)(2)(ii) of this section, to potential parties to the high level waste proceeding. Potential parties may submit comments on or objections to the evaluations prepared pursuant to paragraph (h)(2)(i) of this section or the report prepared pursuant to paragraph (h)(2)(ii) of this section, to the LSS Administrator within 30 days of issuance of the evaluation or report. Comments or objections not filed within this time period are waived.~~
~~(3) (i) In the event that the LSS Administrator NRC 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.~~
~~(3) 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.~~
~~(c) (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.~~
~~(d)~~ Any document that has not been ~~incorrectly excluded from the Licensing Support System~~ provided to other parties in electronic form must be identified in an electronic notice and made available for inspection and copying ~~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~~ it has been requested unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding; provided, however, that the time allowed ~~for submittal~~ under this paragraph will be stayed pending Officer action on a motion to extend the time ~~for submittal~~.

§ 2.1005 Exclusions.

The following material is excluded from the requirement to provide electronic access ~~from entry into the Licensing Support System~~, either ~~through initial entry~~ pursuant to § 2.1003 of this subpart, or through derivative discovery pursuant to § 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) Preferences cited in contractor reports that are readily available;
(g) Classified material subject to subpart I of this part ;
(h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(~~d~~ c) of this subpart, the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 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 Presiding Officer or the Presiding Officer, must be provided in electronic form ~~submitted~~ by the party, interested governmental participant, or potential party that asserted the claim to-
(1) ~~The LSS Administrator for entry into the Licensing Support System into an open access file~~ The other participants; or
(2) To the ~~LSS Administrator or to the~~ Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under § 2.1010(b) or § 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 provided for electronic access ~~submitted for entry into the Licensing Support System~~ pursuant to §§ 2.1003(a) ~~and 2.1003(b)~~ of this subpart.

§ 2.1007 Access.

(a) (1) ~~Terminals for~~ A system to provide electronic access to the integrated electronic information ~~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, beginning in the pre-license application phase.
(2) ~~Terminals for~~ A system to provide electronic access to ~~full headers for all~~ the integrated electronic information ~~documents in the Licensing Support System during the pre-license application phase, and images of the non-privielged 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, beginning in the pre-license application phase ~~, including the Uranium Recovery Field Office in Denver, Colorado~~.
(3) The systems for electronic access ~~terminals~~ specified in paragraphs (a)(1) and (a)(2) of this section shall include ~~terminals~~ locations at Las Vegas, Nevada; Reno, Nevada; 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 § 2.101(f)(8) or § 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 and electronic 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 § 9.41 of this chapter.~~
~~(d)~~ (c) Documents to which electronic access has been provided by other parties, potential parties, or interested governmental participants pursuant to this subpart ~~submitted to the LSS Administrator for entry into the Licensing Support System~~ shall not be considered as agency records of the ~~LSS Administrator~~ Nuclear Regulatory Commission or the Department of Energy unless and until they have been entered into the docket of the proceeding pursuant to §2.702 for purposes of the Freedom of Information Act (FOIA), 5 U.S.C. 552 ~~and shall~~ if such documents remain under the custody and control of the agency or organization that identified ~~submitted~~ the documents ~~to the LSS Administrator~~. Requests for access pursuant to the FOIA to documents submitted by a Federal agency shall be transmitted to that Federal agency.

§ 2.1008 Potential parties.

~~(a)~~ Any person who complies with the regulations set forth in this subpart, including § 2.1003 and agrees to comply with the orders of the Pre-License Application Presiding Officer designated pursuant to § 2.1010 of this subpart may have electronic access to the integrated electronic information made available pursuant to this subpart in the pre-license application phase. ~~A person may petition the Pre-License Application Presiding Officer designated pursuant to § 2.1010 of this subpart for access to pre-licensing information. to the Licensing Support System.~~
~~(b) A petition must set forth with particularity the interest of the petitioner in gaining access to Licensing Support System with particular reference to.~~
~~(1) The factors set out in § 2.1014(c) (1), (2), and (3) of this subpart as determined in reference to the topical guidelines in the applicable NRC Regulatory Guide; or~~
~~(2) The criteria in § 2.715(c) of this part as determined in reference to the topical guidelines in the applicable NRC Regulatory Guide.~~
~~(c) The Pre-License Application Presiding Officer 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 § 2.1003 and agree to comply with the orders of the Pre-License Application Presiding Officer designated pursuant to § 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 responsibility to provide electronic files of documentary material ~~Licensing Support System responsibilities~~;
(2) Establish procedures to implement the requirements in § 2.1003 of this subpart;
(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material ~~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~~ NRC pursuant to § 2.1011(~~e~~ c) of this subpart.
(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer ~~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 § 2.1003 of this subpart has been identified and made electronically available. Upon order of a duly appointed presiding officer, the responsible official shall update this certification. ~~submitted to the Licensing Support System~~.

§ 2.1010 Pre-License Application Presiding Officer.

(a) (1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter (Pre-License Application Presiding Officer) to rule on ~~all petitions for access to the Licensing Support System submitted under § 2.1008;~~ disputes over the ~~entry~~ electronic availability of documents during the pre-license application phase, including disputes relating to ~~relevance and~~ privilege; ~~and disputes relating to the LSS Administrator's decision on substantial compliance pursuant to § 2.1003(h); 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 § 2.1011, including~~ and disputes relating to the implementation of the recommendations of the ~~LSS~~ Advisory Review Panel established under §2.1011(e).
(2) The Pre-License Application Presiding Officer shall be designated ~~six months~~ before ~~access to the Licensing Support System~~ the integrated electronic information is scheduled to be available.
(b) The Pre-License Application Presiding Officer 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 § 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 nondisclosure) 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 § 73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction thatmay be imposed by the Pre-License Application Presiding Officer for 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 § 2.205. 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~~ production under § 2.1005 of this subpart, the potential party, interested governmental participant, or party who asserted the claim of withholding must make ~~submit~~ the document available in accordance with the provisions of this subpart ~~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 § 2.1013(c) of this subpart and entered into the pre-license application electronic docket.
(e) The Pre-License Application Presiding Officer shall possess all the general powers specified in §§ 2.721(~~d~~ c) and 2.718.
(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

§ 2.1011 Management of Electronic Information ~~LSS management and administration~~.

(a) ~~The Licensing Support System shall be administered by the LSS Administrator who~~ Electronic document production and the electronic docket will be subject to the provisions of this subpart. ~~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 NRC, DOE, parties, and potential parties participating in accordance with the provisions of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service. ~~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 § 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 party, potential party, or interested governmental participant, 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 actionsnecessary 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 § 2.1003(h);~~
~~(7) Ensure LSS availability and the integrity of the LSS data base;~~
~~(8) Receive and enter the documentary material specified in § 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 § 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~~ Secretary of the Commission shall establish an ~~LSS~~ Advisory Review Panel composed of the ~~LSS~~ Advisory Committee members identified in paragraph (~~e~~ c)(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~~ The Secretary 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 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~~ The ~~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 High-Level Waste Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmenal groups who were on the NRC High-Level Waste Licensing Support System Advisory Committee and such other members as the Commission may from time to time designate to perform the responsibilities in paragraph (~~f~~ d) of this section.
(~~f~~d) (1) The ~~LSS~~ Advisory Review Panel shall provide advice to-(i) ~~DOE~~NRC on the fundamental issues of ~~the design and development of~~ the computer system necessary to use the integrated electronic information effectively ~~implement the Licensing Support System~~ under paragraph (b) of this section; and
(ii) The ~~LSS Administrator~~ Secretary of the Commission on the operation and maintenance of the electronic docket ~~Licensing Support System~~ under the Commission's Rules of Practice (10 CFR Part 2). ~~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~~ providing electronic access to documentary material 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 § 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 Secretary of the Commission ~~LSS Administrator~~.

§ 2.1012 Compliance.

(a) In addition to the requirements of § 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 Secretary of the Commission determines that it can not be effectively accessed through the Commission's electronic docket. ~~LSS Administrator has not issued the certification described in § 2.1003(h)(1) of this part~~.
(b) (1) A person, including a potential party ~~granted~~ given access to the ~~Licensing Support System~~ integrated electronic information under ~~§ 2.1008 of~~ this subpart, shall not be granted party status under § 2.1014 of this part, or status as an interested governmental participant under § 2.715(c) of this part, if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 of this subpart at the time it requests participation in the high-level waste licensing proceeding under either § 2.1014 or § 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 subsequent compliance with the requirements of § 2.1003 of this subpart. Admission of such a party or interested governmental participant under § 2.1014 of this subpart or § 2.715(c) of this part, respectively, shall be conditioned on accepting the status of the proceeding at the time of admission.
(c) The Presiding Officer shall not make a finding of substantial and timely compliance pursuant to

paragraph (b) of this section for any person who is not in compliance with all applicable orders of the Pre-License Application Presiding Officer designated pursuant to § 2.1010.
(d) Access to the pre-license application electronic docket or the electronic docket ~~Licensing Support System~~ may be suspended or terminated by the Pre-License Application Presiding Officer or the Presiding Officer for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-License Application Presiding Officer or the Presiding Officer or the requirements of this subpart.

§ 2.1013 Use of the electronic docket ~~LSS~~ during the ~~adjudicatory~~ proceeding.

(a) (1) Pursuant to § 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 in an electronic form 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~~ the Secretary, upon determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket 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 made available to the parties in electronic form ~~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~~ electronic docket ~~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 electronic docket ~~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 respository operations area pursuant to part 60 of this chapter shall be transmitted electronically by the submitter to the Presiding Officer, parties, ~~the LSS Administrator,~~ and the Secretary, according to established format requirements.
Parties and interested governmental participants will be required to use apassword 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 completed 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 §§ 2.708 and 2.701 of this part.~~
~~(6)~~ All Presiding Officer and Commission issuances and orders will be transmitted electronically to the parties~~,~~ and interested governmental participants~~, and the LSS Administration~~.
(d) Online access to the electronic docket~~Licensing Support System~~, including a Protective Order File if authorized by a Presiding Officer, shall be provided to the Presiding Officer, the representatives of the parties and 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 § 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 § 2.715(c) of this part, shall be filed within thirty days after the publication of the notice of hearing in the Federal Register. Nontimely filings will not be entertained absent a determination by the Commission, or the Presiding Officer 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 paragraphs (a)(2) and (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 that petitioner seeks to have litigated in the matter;
(iii) With respect to each contention:

(A) A specific statement of the issue of law or fact to be raisedor controverted.
(B) A brief explanation of the basis of the contention.
(C) A concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion.
(D) Sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.
This showing must include reference to the specific documentary material that provides a basis for the contention, or if the petitioner believes that any documentary material fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. In determining whether a genuine dispute exists on a material issue of law or fact, a dispositive factor shall be whether the contention, if proven, would be of no consequence in the proceeding because it would not entitle the petitioner to relief.
(E) The specific regulatory or statutory requirement to which the contention is relevant.
(3) Any petitioner who fails to satisfy paragraphs (a)(2) (ii) and (iii) 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, and 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 §§ 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, or the Presiding Officer 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, the Commission or Presiding Officer shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:
(1) The nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding;

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding;
(3) The possible effect of any order that may be entered in the proceeding on the petitioner's interest;
(4) The failure of the petitioner to participate as a potential party in the ~~Licensing Support System~~ pre-license application phase.
(5) In determining whether a genuine dispute exists on a material issue of law or fact, whether the contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief.
(d) An order permitting intervention and/or directing a hearing may be conditioned on such terms as the Commission, or the designated Presiding Officer may direct in the interests of:
(1) Restricting irrelevant, duplicative, or repetitive evidence and argument,
(2) Having common interests represented by a spokesman, and
(3) Retaining authority to determine priorities and control the compass of the hearing.
(e) In any case in which, after consideration of the factors set forth in paragraph (c) of this section, the Commission or the Presiding Officer finds that the petitioner's interest is limited to one or more of the issues involved in the proceeding, any order allowing intervention shall limit the petitioner's participation accordingly.
(f) A person permitted to intervene becomes a party to the proceeding, subject toany 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.
(h) If the Commission or the Presiding Officer determines that any of the admitted contentions constitute pure issues of law, those contentions must be decided on the basis of briefs or oral argument according to a schedule determined by the Commission or the Presiding Officer.

§ 2.1015 Appeals.

(a) No appeals from any Pre-License Application Presiding Officer or Presiding Officer order or decision issued under this subpart are permitted, except as prescribed in paragraphs (b), (c), and (d) of this section.
(b) A notice of appeal from (1) a Pre-License Application Presiding Officer order issued pursuant to § 2.1010, (2) a Presiding Officer First or Second Prehearing Conference Order issued pursuant to § 2.1021 or § 2.1022, (3) a Presiding Officer order granting or denying a motion for summary disposition issued in accordance with § 2.1025 of this part, or (4) a Presiding Officer order granting or denying a petition to amend one or more contentions pursuant to § 2.1014(a)(4), must be filed with the Commission no later than (10) days after service of the order. A supporting brief must 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 days after service of the appeal.
(c) Appeals from a Presiding Officer initial decision or partial initial decision must be filed and briefed before the Commission in accordance with the following requirements.
(1) Notice of appeal. Within ten (10) days after service of an initial decision, any party may take an appeal to the Commission by filing a notice of appeal. The notice shall specify:
(i) The party taking the appeal; and
(ii) The decision being appealed.

(2) Filing appellant's brief. Each appellant shall file a brief supporting its position on appeal within thirty (30) days (40 days if Commission staff is the appellant) after the filing of notice required by paragraph (a) of this section.
(3) Filing responsive brief. Any party who is not an appellant may file a brief in support of or in opposition to the appeal within thirty (30) days after the period has expired for the filing and service of the brief of all appellants. Commission staff may file a responsive brief within forty (40) days after the period has expired for the filing and service of the briefs of all appellants. A responding party shall file a single responsive brief regardless of the number of appellants' briefs filed.
(4) Brief content. A brief in excess of ten (10) pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited.
(i) An appellant's brief must clearly identify the errors of fact or law that are the subject of the appeal.

An intervenor-appellant's brief must be confined to issues which the intervenor-appellant placed in controversy or sought to place in controversy in the proceeding. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must also be provided.
(ii) Each responsive brief must contain a reference to the precise portion of the record which supports each factual assertion made.
(5) Brief length. A party shall not file a brief in excess of seventy (70) pages in length, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc. A party may request an increase of this page limit for good cause. Such a request shall be made by motion submitted at least seven (7) days before the date upon which the brief is due for filing and shall specify the enlargement requested.
(6) Certificate of service. All documents filed under this section must beaccompanied by a certificate reflecting service upon all other parties to the proceeding.
(7) Failure to comply. A brief which in form or content is not in substantial compliance with the provisions of this section may be stricken, either on motion of a party or by the Commission on its own initiative.
(d) When, in the judgment of a Pre-License Application Presiding Officer or Presiding Officer, 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 Pre-License Application Presiding Officer or Presiding Officer may refer the ruling promptly to the Commission, and shall provide notice of this referral to the parties, interested governmental participants, or potential parties. The parties, interested governmental participants, or potential parties may also request that the Pre-License Application Presiding Officer or Presiding Officer certify, pursuant to § 2.718(i) of this part, rulings not immediately appealable under paragraph (b) of this section.
(e) 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 Presiding Officer, to the Presiding Officer. All motions, unless made orally on the record, shall be filed according to the provisions of § 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 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 Presiding Officer or the Secretary or the Assistant Secretary.
(d) The Presiding Officer 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 §2.720(h)(2) of this part or § 2.1018(f) of this subpart, parties, potential parties, and interested governmental participants may file answers to the motion pursuant to paragraph (c) of this section. The Presiding Officer 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 Presiding Officer shall issue a written order on the motion which summarizes the views presented by the parties, potential parties, and interested governmental participants unless the conference has been transcribed. This does not preclude the Presiding Officer from issuing a prior oral ruling on the matter which is effective at the time of its issuance, 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, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the electronic docket ~~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) (1) 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~~ made available pursuant to § 2.1003 of this subpart; entry upon land for inspection, access to raw data, or other purposes pursuant to § 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 § 2.1003 (~~c~~ b) and (~~d~~ c) of this subpart; depositions upon oral examination pursuant to § 2.1019 of this subpart; requests for admission pursuant to § 2.742 of this subpart; informal requests for information not made electronically available ~~in the Licensing Support System~~, such as the names of witnesses and the subjects they plan to address; 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 Presiding Officer, 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, potential 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 §§ 2.1018(a)(2) and 2.1019 of this subpart, all other discovery shall begin during the pre-license application phase. Discovery pursuant to §§ 2.1018(a)(2) and 2.1019 of this subpart shall begin after the issuance of the first pre-hearing conference order under § 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 documentary material 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, potential party, or interested governmental participant 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 these materials when the required showing has been made, the Presiding Officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party, 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 Presiding Officer may make any order that 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 Presiding Officer; (6) that, subject to the provisions of § 2.790 of this part, a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (7) that studies and evaluations not be prepared. If the motion for a protective order is denied in whole or in part, the Presiding Officer may, on such terms and conditions as are just, order that any party, potential party, interested governmental participant or

other person provide or permit discovery.
(d) Except as provided in paragraph (b) of this section, and unless the Presiding Officer upon motion, for the convenience of parties, potential parties, interested governmental participants, and witnesses and in the interest of justice, orders otherwise, methods of discoverymay 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~~ made available in electronic form 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' 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 Presiding Officer or agreement of the parties, potential parties, and interested governmental participants.
(f) (1) If a deponent of 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 Presiding Officer, 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, interested governmental participant, or other person 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 Presiding Officer 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 § 2.720(h)(2)(i) of this part.

(g) The Presiding Officer pursuant to § 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.

(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 Presiding Officer, give reasonable notice in writing to every other party and interested governmental participant, to the person to be examined, and to the Presiding Officer of the proposed time and place of taking the deposition; the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient to identify him or 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 an electronic copy of the deposition to the Secretary for entry into the electronic docket ~~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 § 2.1018(a)(2) 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 and interested governmental participant 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 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~~ in electronic form to the Secretary for entry into the electronic docket 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 electronic 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 made available electronically ~~entered into the Licensing Support System~~. All documents that are not identical to documents already ~~in the~~ made available electronically ~~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 the initial requirements of § 2.1003 to be made available electronically ~~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~~ provided electronically.
(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 or interested governmental participant requests that have not already been ~~entered into the Licensing Support System~~ provided electronically 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 provided electronically ~~entered into the Licensing Support System~~, and on which it intends to rely at hearing, be made electronically available ~~entered into the LSS~~ by the deponent.
(6) The deposing party or interested governmental participant 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 someone other than a party or interested governmental participant.
(j) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations, for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the Presiding Officer, by subpoena or otherwise: Provided, That the Presiding Officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations and the testimony sought is not reasonably obtainable from another source by any party, require the attendance and testimony of named NRC personnel.

§ 2.1020 Entry upon land for inspection.

(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 § 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 Presiding Officer.
(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 Presiding Officer will direct the parties, interested governmetalparticipants and any petitioners for intervention, or their counsel, to appear at a specified time and place, within seventy days after the notice of hearing is published, or such other time as the Commission or the Presiding Officer may deem appropriate, for a conference to:
(1) Permit identification of the key issues in the proceeding;
(2) Take any steps necessary for further identification of the issues;
(3) Consider all intervention petitions to allow the Presiding Officer to make such preliminary or final determination as to the parties 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(d).
(b) The Presiding Officer 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 Presiding Officer shall enter an order which recites the action taken at the conference, the schedule for further actions in the proceeding, and 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 Presiding Officer in a proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area shall direct the parties, interested governmental participants, or their counsel to appear at a specified time and place not later than thirty days after the Safety Evaluation Report is issued by the NRC staff for a conference to consider:
(1) Any amended contentions submitted under § 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(d); 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 Presiding Officer shall enter an order which recites the action taken at the conference and the agreements by the parties, limits the issues or defines the matters in controversy to be determined in the proceeding, sets a discovery schedule, and sets the hearing schedule.

§ 2.1023 Immediate effectiveness.

(a) Pending review and final decision by the Commission, an initial decision resolving all issues before the Presiding Officer in favor of issuance or amendment of a construction authorization pursuant to § 60.31 of this chapter or a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to § 60.41 of this chapter, will be immediately effective upon issuance except-
(1) As provided in any order issued in accordance with § 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 § 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 respository operations area, or amendments thereto, following an initial decision resolving all issues before the Presiding Officer in favor of the licensing action, upon making the appropriate licensing findings, except-
(1) As provided in paragraph (c) of this section; or
(2) As provided in any order issued in accordance with § 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 Presiding Officer 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 Presiding Officer 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 Presiding Officer 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 Presiding Officer'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 Presiding Officer'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 Presiding Officer 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 days of service of the Commission's written statement.

§ 2.1025 Authority of the Presiding Officer to dispose of certain issues on the pleadings.

(a) Any party may move, with or without supporting affidavits, for a decision by the Presiding Officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may file an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall annex to any answer opposing the motion a separate, short, and concise,statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement to be filed by the moving party will be deemed to be admitted unless controverted by the statement required to be filed by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto may be entertained. The Presiding Officer may dismiss summarily or hold in abeyance motions filed shortly before the hearing commences or during the hearing if the other parties or the Presiding Officer would be required to divert substantial resources from the hearing in order to respond adequately to the motion.
(b) Affidavits must set forth those facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated therein. The Presiding Officer may permit affidavits to be supplemented or opposed by further affidavits. When a motion for summary disposition is made and supported as provided in this section, a party opposing the motion may not rest upon the

mere allegations or denials of its answer; its answer by affidavits or as otherwise provided in this section must set forth specific facts showing that there is a genuine issue of fact. If no such answer is filed, the decision sought, if appropriate, must be rendered.
(c) The Presiding Officer shall render the decision sought if the filings in the proceeding show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. However, in any proceeding involving a construction authorization for a geologic repository operations area, the procedure described in this section may be used only for the determination of specific subordinate issues and may not be used to determine the ultimate issue as to whether the authorization must be issued.

§ 2.1026 Schedule.

(a) Subject to paragraphs (b) and (c) of this section, the Presiding Officer shall adhere to the schedule set forth in appendix D of this part.
(b) (1) Pursuant to § 2.711, the Presiding Officer may approve extensions of no more than 15 days beyond any required time set forth in this subpart for a filing by a party to the proceeding. Except in the case of exceptional and unforseen circumstances, requests for extensions of more than 15 days must be filed no later than 5 days in advance of the required time set forth in this subpart for a filing by a party to the proceeding.
(2) Extensions beyond 15 days must be referred to the Commission.
If the Commission does not disapprove the extension within 10 days of receiving the request, the extension will be effective. If the Commission disapproves the extension, the date which was the subject of the extension request will be set for 5 days after the Commission's disapproval action.
(c) (1) The Presiding Officer may delay the issuance of an order up to thirty days beyond the time set forth for the issuance in appendix D.
(2) If the Presiding Officer anticipates that the issuance of an order will not occur until after the thirty day extension specified in paragraph (c)(1) of this section, the Presiding Officer shall notify the Commission at least ten days in advance of the scheduled date for the milestone and provide a justification for the delay.

§ 2.1027 Sua Sponte.

In any initial decision in a proceeding on an application to receive and possess waste at a geologic repository operations area, the Presiding Officer, other than the Commission, shall make findings of fact and conclusions of law on, and otherwise give consideration to, only those matters put into controversy by the parties and determined to be litigable issues in the proceeding.

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August 8, 1997

MEMORANDUM TO:

Chairman Jackson
Commissioner Dicus
Commissioner McGaffigan
Commissioner Diaz

FROM:

B. Paul Cotter, Jr.
Chief Administrative Judge
Atomic Safety and Licensing Board Panel

SUBJECT:

COMMENTS ON SECY-97-154, "RESOLUTION OF LICENSING SUPPORT SYSTEM (LSS) ISSUES AND DRAFT PROPOSED RULE, 10 C.F.R. PART 2, SUBPART J"

Rather than resolve the perceived problems with the Licensing Support System (LSS), the proposals in SECY-97-154 could well significantly compound the difficulty of timely completion of the high level waste repository (HLWR) licensing hearing. ASLBP's analysis of the reasons for this conclusion are set forth in some detail in the attached document.

To review briefly, the HLWR is a complex, approximately $30 billion facility required by statute to be licensed in an extraordinarily short period of time. The HLWR proceeding will require a document database estimated to total up to 20 million pages and a hearing record for decision estimated at up to 2 million pages. The parties with potential interests include the Department of Energy; the state of Nevada and, possibly, most of the rest of the lower 48 states; several Native American tribes; Nevada and California counties; and any number of environmental and trade association groups. The statute requires a final licensing decision to be issued in, at most, four years. NRC staff review of the application, which staff has said will take eighteen months, the hearing, and any appeals must all be completed in this time period.

Consequently, the LSS, a centralized electronic database of millions of pages of technical and related material and an electronic hearing docket, was conceived to: (1) facilitate pre-license application technical review by NRC and other parties; (2) preserve the years and resources that otherwise would be consumed by document discovery and FOIA requests; and (3) eliminate, through electronic service of filings, the time that otherwise would be lost in the litigation by mail service.

Much of subject proposal is driven by the misapprehension in early LSS thinking that an LSS system would require an expensive R & D effort and a new, separate office to run any newly developed system. That is no longer the case.

ASLBP's fifteen years of experience in developing and operating electronic filing and large electronic databases lead us to conclude that the proposed changes in SECY-97-154 would not accomplish these purposes. First, putting aside the fact that the proposal abandons any attempt to create a coherent, central database for technical review of the application, we have serious concerns about the reliability and security of the proposed decentralized, Internet-based system as a discovery document repository. Since the LSS was conceived some ten years ago, document management systems and approaches have been developed and are in operation in the courts of several states that, taken together, could satisfy the proposal's deficiencies and meet the needs of all users. Some of these systems are free to the court because they are user financed. Because of these developments since the LSS was first conceived, it may well be that an LSS system could be obtained and operated at roughly the same cost and FTE expense as that listed in subject proposal.

Additionally, we are concerned about the new definition of "documentary material" proposed in SECY-97-154. This definition has the potential to exclude party preapplication access to a significant

volume of relevant materials, creating the possibility of substantial postapplication delay due to additional discovery requests and disputes.

Accordingly, ASLBP recommends that the Commission:

1. Order an independent systems analysis that would identify and analyze existing technologies and systems that could be used for establishing a discovery document database; and

2. Retain the existing 10 C.F.R. Part 2, Subpart J definition of "documentary material."

Attachment:
As stated

DISTRIBUTION:

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ASLBP Analysis and Comments on SECY-97-154, "Resolution of Licensing Support System (LSS) Issues and Draft Proposed Rule, 10 C.F.R. Part 2, Subpart J"

SECY-97-154, "Resolution of Licensing Support System (LSS) Issues and Draft Proposed Rule, 10 C.F.R. Part 2, Subpart J," (July 21, 1997) [hereinafter SECY-97-154], provides a proposed revised 10 C.F.R. Part 2, Subpart J, that would alter significantly the existing preapplication procedures regarding the future Department of Energy (DOE) request for an agency license to construct a high-level waste repository (HLWR) under the provisions of the Nuclear Waste Policy Act of 1982 (NWPA). In particular, the SECY-97-154 proposal would eliminate both the Licensing Support System (LSS), the centralized document repository that is to be created before the HLWR licensing proceeding begins to hold party discovery and official docket materials, and the LSS Administrator (LSSA), the agency official with responsibility for the operation of the LSS. The proposal also would significantly change the role of the LSS Advisory Review Panel (LSSARP).

For the reasons set forth below, the ASLBP is concerned about (1) the ability of the proposed decentralized, Internet-dependent discovery document database system to fulfill the important role of the LSS in ensuring timely completion of the HLWR licensing proceeding; and (2) the impact of narrowing the definition of the documentary information the potential parties are required to place in that system.

I. BACKGROUND

A. The LSS Under the Existing Subpart J

As originally envisioned by the parties to the Subpart J negotiated rulemaking and the Commission in adopting Subpart J, the LSS is to be the electronic information management system for the HLWR licensing proceeding. As was noted in the statement of considerations accompanying the final rule that is the existing Subpart J, the LSS is to be created before any DOE construction permit application is filed to help ensure the timely completion of the HLWR construction authorization hearing during the three-year period afforded under section 114(d) of the NWPA, 42 U.S.C. § 10134(d). Specifically, the Commission declared that the LSS was being established to serve the following purposes:

1. Eliminating the "most burdensome and time-consuming" aspect of document discovery, i.e., the physical production of documents after a license application has been filed, by providing for the preapplication identification and submission of discoverable documents.

2. Eliminating the "equally burdensome and numerous" Freedom of Information Act (FOIA) requests for the same information from both DOE and the NRC.

3. Enabling the comprehensive and early technical review of relevant licensing material by the DOE and NRC staffs.

4. Enabling the comprehensive and early review of the millions of pages of relevant licensing material by the potential parties to the HLWR proceeding, thereby permitting the earlier submission of better focused contentions with a substantial time savings during the proceeding.

5. Providing for electronic transmission of filings, thereby eliminating a significant amount of delay.

54 Fed. Reg. 14,925, 14,925 (1989).

Relative to the LSS system itself, although DOE is assigned responsibility for designing and developing the LSS computer system, the LSSA, an NRC employee, is responsible for managing and administering

the system. The LSSA's duties include providing operation and maintenance personnel, materials, and services; ensuring LSS availability and integrity; receiving and entering "documentary material" into the LSS; maintaining security and establishing access protocols; establishing user training and support programs; and certifying DOE has complied with its Subpart J responsibilities, including making its "documentary material" available. See 10 C.F.R. § 2.1011(b)-(d). This last duty -- certification -- is particularly important because without it, DOE's application would be subject to adjudication under the usual Subpart G procedures, see id. § 2.1003(h)(1), raising the specter that the statutorily-mandated three year completion date might not be met.

In addition, Subpart J assigns LSS administrative responsibilities to the LSS Advisory Review Panel (LSSARP) and a Pre-License Application Presiding Officer (Pre-Application Board). The LSSARP is an advisory committee consisting of potential LSS users who are to provide DOE and/or the LSSA with recommendations on LSS design and development issues and LSS operation and maintenance, including format standards, access protocols, and electronic filing procedures and standards. See id. § 2.1011(e)-(f). The Pre-Application Board is an Atomic Safety and Licensing Board or other Commission-appointed official who is to rule on access petitions; disputes concerning preapplication document entry, including relevance and privilege issues; disputes regarding LSSA substantial compliance certification; LSS design, development, or operation disputes; and disputes concerning implementation of LSSARP recommendations. See id. § 2.1010(a)-(b).

B. Proposals to Revise the LSS

1. SECY-96-178

In SECY-96-178,"Action Plan to Address Outstanding LSS Issues," (Aug. 9, 1996) [hereinafter SECY-96-178], it was first suggested to the Commission that revisions to the existing Subpart J might be appropriate. According to SECY-96-178 "[t]ime and events" had overtaken the regulatory and technical assumptions upon which the LSS was footed. Although declaring that the "primary LSS functions . . . should be preserved," SECY-96-178 suggested strategies for reexamining Subpart J. SECY-96-178, at 1.

Because the delay in the DOE HLWR construction permit application and the accompanying funding uncertainties that surrounded the HLWR program had delayed the implementation of the LSS, it was asserted in SECY-96-178 that as a result of this delay the LSS function of providing an early discipline to the tracking of DOE decisions had not been realized. With this purported loss of a carefully documented DOE decision-making trail, SECY-96-178 declared that the LSS could no longer be relied upon to aid the staff in ensuring that its technical review would meet the three-year application processing schedule. In addition, this delay was found to be significant because it had resulted in a large accumulation of documentary material awaiting LSS conversion, much of which might no longer be relevant to the licensing proceeding. See id. at 4-5.

At the same time, it was asserted in SECY-96-178 that the intervening years had resulted in significant developments in document automation technology such that the "commercially available off-the-shelf" (COTS) software and Internet-related document exchange and browse/search/retrieval engines made the existing LSS concept of a central, dedicated, custom-built document management system outmoded. Moreover, according to SECY-96-178, NRC's own technological innovations had shown that such non-COTS functionalities as electronic filing and docketing that were to be part of the LSS could be done without putting the LSS into place. See id. at 5-6.

Declaring that this technological innovation as well as the budget and regulatory uncertainties regarding the HLWR mitigated against further LSS development, a four component plan was put forth in SECY-96-178 for addressing the perceived LSS deficiencies, which included: (1) reassessing the fundamental technological approach for the LSS, including evaluating the technological feasibility and resource constraints/requirements of a decentralized Internet-type system in which (a) the parties would maintain their own document databases that could be accessed via hyperlinks, and (b) the LSSA would oversee the system through automated, on-line reviews; (2) studying the possibility of changes to the LSS rule in Part 2, Subpart J; (3) seeking to retain important LSS features negotiated by the affected

parties, such as timely access to appropriate documents; and (4) establishing a mechanism for ongoing technical coordination with the LSSARP (or a similar non-advisory committee group) using the Internet and videoconferencing. SECY-96-178 indicated that, unless the Commission directed otherwise, this four-pronged strategy would be pursued, including beginning electronic discussions about possible LSS changes with the LSSARP members. See id. at 7-10.

2. LSSNet

Shortly after the Commission gave its approval to the four-prong approach outlined in SECY-96-178, the agency established the LSSNet site on the Internet to foster communication with LSSARP members and the public regarding changes to the LSS. Initially, in Phase I, the agency sought comments on seven different general topics concerning possible changes to the LSS. Then, in Phase II, comments were sought on three narrower issues, including elimination of the LSS or retention as a decentralized system. Finally, in Phase III, a specific proposal for revising Subpart J to eliminate the centralized LSS and the LSSA was put forth with a request for comments on the three issues of the acceptability of the general concept of the proposed rule, its specific provisions, and the concept of allowing DOE to file an electronic application with hypertext links to the various supporting documents.

Of the ninety-two comments filed during the eight-month LSSNet process, most were from NRC or DOE personnel. Individuals representing the State of Nevada, two Nevada counties, a California county, and a Native American group did submit comments, although a substantial portion of the non-NRC/DOE comments (nine of twenty-three) were submitted by the State and two local governments in the last week of Phase III and consisted of short comments by each entity on each of the three issues being addressed in that phase.

3. SECY-97-154

SECY-97-154 marks the culmination of the LSS review effort. Asserting (1) the LSS as envisioned under the existing Subpart J would require "an enormously expensive custom designed system" that would not take advantage of current and future technology; and (2) there is a large document backlog containing a substantial amount of documents of questionable relevancy that create a "substantial chance" DOE will be unable to obtain LSSA compliance certification, SECY-97-154 recommends significant revisions to Subpart J. See SECY-97-154, at 4-5. The proposals in SECY-97-154 are to:

a. Eliminate the centralized, NRC-administered LSS and substitute a system of party-maintained and operated electronic databases accessible through the Internet.

b. Revise the definition of "documentary material" required to be placed in the electronic database from the existing "any material or other information that is relevant to, or likely to lead to the discovery of information that it relevant to," 10 C.F.R. § 2.1001, to include only that material or information that a party, potential party, or interested governmental participant "intends to rely and cite in support of its position in the proceeding" or that is "relevant to, but does not support, that material or information or that party's position," SECY-97-154, attach. 1, at 11.

c. Eliminate the LSSA and make the parties responsible for certifying to the Pre-Application Board that they are in compliance with the requirements for establishing and operating an accessible electronic database.

d. Rename the LSSARP or eliminate that advisory committee and substitute a voluntary users group.

See SECY-97-154, at 5-6.

II. ASLBP Concerns

Over the past year, ASLBP has expressed its concern about establishing a decentralized, Internet-based system for LSS materials, particularly absent some kind of independent systems/cost-benefit analysis

comparing such systems. Moreover, near the conclusion of the LSSNet process in June 1997, ASLBP and OGC representatives met to discuss the scope and direction of changes to Subpart J, in particular the scope of the definition of "documentary materials," which governs what materials parties are required to place in their databases, and the roles of the LSSA/Pre-Application Board in any revised Subpart J.

After this June 1997 meeting, the Chief Administrative Judge expressed concerns about several of the concepts involved in the proposed rule, including the definition of "documentary material" and the move to a decentralized system. See Exhibit 1. Subsequently, the working definition of "documentary material" was changed in a way that, at least in some measure, addressed ASLBP objections about how that term was being redefined. ASLBP's concerns otherwise remained unresolved, however.

Two premises underlie ASLBP's comments on the proposal now contained in SECY-97-154. The first is that, as the Commission recognized in adopting Subpart J, providing potential parties to the HLWR adjudicatory proceeding with access to documentary material that otherwise would be discoverable during a 10 C.F.R. Subpart G hearing before that hearing is convened will play a significant role in allowing the agency to meet the existing statutory deadline for completing the HLWR construction permit review process. See 54 Fed. Reg. at 14,927, 14,929. The second, is that, as was recognized in SECY-96-178, for any Subpart J rule change the agency must be sensitive to the often-expressed position of the parties involved in the rulemaking negotiations on Subpart J that they receive the major benefits they bargained for. These benefits include timely access to documents and assurance that appropriate documents are available. See SECY-96-178, at 9.

A. Move Away from a Centralized Discovery Document Depository

1. Need for a Systems/Cost-Benefit Analysis

The LSS was intended to be a centralized electronic database containing the HLWR proceeding discovery material and the official docket for the proceeding. Party documents, generally in both text and image versions with an accompanying bibliographic header, are to be submitted to the LSSA for incorporation into the LSS. Access to the centralized database would be through terminals placed in various public locations in the Washington area and in Nevada, and, for the parties to the proceeding, by telephone dialup access for which the parties would have to bear the expense. See 10 C.F.R. § 2.1007(a), (c). The parties would be able to access the documents through header and full-text searches.

In proposing elimination of the LSSA-administered centralized discovery document database in favor of individual party-maintained and operated discovery document databases, SECY-97-154 relies on two "post-LSS adoption" developments: (1) the "universally available" Internet, which will make the individual party databases accessible to all other parties regardless of their location; and (2) the ready availability of COTS that can perform the LSS document management functions. See SECY-97-154, attach. 1, at 3-4. The extent to which either of these factors supports abandoning the LSS concept of a centralized database is not, however, wholly apparent.

Timeliness is a significant factor in the HLWR proceeding. Therefore, system reliability is at a premium for the LSS. Yet, one need look no further than the front page of the daily paper to see there are substantial questions about whether the Internet yet provides the degree of reliability and security that is needed for the LSS system. See Rajiv Chandrasekaran, Group Blocks Postings of UUNet Customers, Wash. Post, Aug. 5, 1997, at C1 (Exhibit 2); Rajiv Chandrasekaran & Elizabeth Corcoran, Human Errors Block E-Mail, Web Sites in Internet Failure, Wash. Post, July 18, 1997, at A1 (Exhibit 3). Moreover, anyone who has used the Internet with any frequency knows that connections can be frustratingly slow.(1)

As to the availability of COTS software that may make unnecessary the degree of "customization" that was once envisioned for the LSS, it is not clear why this factor makes a centralized system outmoded. Indeed, there are centralized "COTS" document database management systems now available, such as the Delaware State Courts' LEXIS/NEXIS-based Complex Litigation Automated Docket (CLAD) system, that might be utilized. (2)

Ultimately, what this suggests, and what ASLBP has been recommending, is that before abandoning the centralized database concept at the heart of the LSS, an independent systems analysis should be done to take a closer look at the costs and benefits of the centralized system versus the decentralized system now suggested in SECY-97-154. When the LSS was being planned in the late 1980's, Science Applications International Corp. (SAIC) did a series of system analysis studies to try to establish the scope and cost of the project under then-existing technology. A major change in the system such as that proposed in SECY-97-154 arguably merits a similar, albeit appropriately scaled-down approach.

Any independent study involves time and money. There nonetheless does appear to be as much as a year available now for such a study. Given the importance of this system to the timely completion of the HLWR proceeding, ASLBP believes such an analysis is vital to ensuring that the LSS, in whatever form or under whatever name, fulfills the central purpose for which it was intended. (3)

2. Other Issues

In making a systems/cost-benefit study, a number of factors should be considered, including comparing a centralized with a decentralized system in terms of Internet/direct dialup connectivity and customization/COTS availability. Relative to the SECY-97-154 decentralization proposal, however, there are other questions that should be considered as well.

For instance, decentralizing the LSS and leaving it to the individual parties to operate and maintain their own databases arguably increases the chance that one or more of the party discovery databases, particularly those of the parties who may have more limited resources to devote to system upkeep and repair, will be unavailable for indeterminate periods of time. The statement of considerations seems to suggest one possible solution to this problem, i.e., that a party could "provid[e] its documents either to the NRC or to the DOE, to have the NRC or the DOE maintain the documents for electronic access." SECY-97-154, attach. 1, at 6. There are important unanswered questions with respect to this solution, however. First, would there be any cost to the parties to have DOE or NRC accept their documents and maintain them as part of the DOE or NRC databases. If so, and the parties find this cost excessive, this may negate the purpose this proposal is designed to achieve. On the other hand, if it is more cost effective for the nonfederal parties to give NRC or DOE their documents, they may simply forego setting up their own databases. The result would be only two databases, one run by NRC and one run by DOE, which seemingly leads right back to the issue of centralization. See SECY-95-153, "[LSS] Senior Management Team Recommendations on Direction of the [LSS]," (June 14, 1995), at 5 (LSS provides economies of administration, including eliminating the need to acquire information from multiple sources and avoiding duplication of records).

There also is the question of the use of bibliographic header fields, which apparently have been almost entirely eliminated in the move to decentralization. Subpart J now provides that all documents supplied by a party for inclusion in the LSS are to be accompanied by a bibliographic header. See 10 C.F.R. § 2.1003(a)-(c). This, in turn, allows for two search capabilities, full-text word searches and searches based on the series of predefined header fields such as type of document, date of issuance, author, recipient, etc. Under the SECY-97-154 proposal, headers generally would be required only for those documents for which some kind of a nondisclosure privilege is claimed, in lieu of submitting the text of the privileged document, or for materials not suitable for image or full-text search. See SECY-97-154, attach. 1, at 13. Yet, no matter how narrowly defined, full-text word searches on a database the size of those being contemplated for DOE and NRC documents are likely to produce a significant number of "hits." Without the capability to search on header fields as well, searches may become so unwieldy as to be of little value. Moreover, curtailing header fields may make it more difficult to produce useful reports and listings regarding database information.

Of course, headers generally require manual input, which is an additional cost, and may require some software customization for systems integration. Nonetheless, before abandoning or significantly curtailing this search tool, ASLBP hopes some further analysis will be done.

Finally, as part of this study, further consideration should be given to the issue of whether or not to retain the LSSA position. It may well be, depending on what is available, that even a centralized

discovery database system could now be operated and maintained under the direction of the Pre-Application Board, as is done with the court-administered CLAD system.(4)

B. Definition of Documentary Material

Under the existing Subpart J, the "documentary material" to be placed in the LSS is defined as "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 a HLWR site, with the additional instruction that the scope of any documentary material is to be guided by a set of NRC Regulatory Guide topical guidelines. See 10 C.F.R. § 2.1001. Thus, as originally envisioned, a central feature of the LSS was that prior to any construction permit application being filed, the potential parties to the HLWR proceeding, including DOE, the NRC staff, the State of Nevada, interested local governments, Native America tribes and organizations, and environmental groups, would have access to those documents they normally could obtain in an adjudication by utilizing discovery document production requests (see id. § 2.741(a)) after an application was filed and, in the case of intervenors, they were admitted as parties with litigable contentions. See id. § 2.1002(a). As a quid pro quo for receiving this "up front" document production, the parties generally would not be entitled to any document discovery once the HLWR construction permit application was filed other than in connection with a party deposition or a nonparty subpoena. See id. §§ 2.1018(b)(1), (f)(3); 2.1019(a).

The SECY-97-154 proposal would revise this definition to encompass that documentary material a potential party "intends to rely and cite in support of its position in the proceeding" or "which is relevant to, but does not support," that relied upon/cited material or information, or that party's position. SECY-97-154, attach. 1, at 5. It seems apparent that the change in wording from the existing definition is intended to require disclosure of a different, more limited scope that focuses more narrowly on what a party intends to utilize in the proceeding, i.e., "rely [on] and cite," rather than simply what is relevant to licensing a HLWR.

Thus, depending on how broadly this proposed definition is interpreted, rather than having its disclosure responsibilities defined in terms of what is relevant to licensing a HLWR, DOE's obligations might be delineated almost solely in terms of its application, which undoubtedly will be the principal document it relies upon/cites in support of its positions in the licensing proceeding. Just how detailed application will be is yet to be seen. Further, although contrary material is to be included under the proposed new definition, the document submitter arguably has more latitude to exclude materials in making the determination about what is contrary to its position, a subjective (and perhaps self-serving) determination. In addition, narrowing the scope of preapplication disclosure with this new definition enhances the possibility of postapplication disclosure disputes that could delay the hearing. (5)

Given the affected parties lack of participation in the LSSNet, which included a definition of "documentary material" different from the existing Subpart J and the SECY-97-154 proposed revision, (6) it cannot be said with any certainty what the positions of the other parties to the negotiated rulemaking will be regarding this language change. Nonetheless, to the extent it can be read to give them something less than they have under the existing rule, they likely will protest. (7) This, in turn, raises the question why this language change is necessary.

The proposed rule statement of considerations accompanying SECY-97-154, seems to suggest that this change in the scope of available materials is necessary because of a high likelihood that LSSA certification cannot be granted in that (1) much of the early material may no longer be relevant to the licensing proceeding; (2) all accumulated documents may not have been identified and properly maintained; and (3) there may be larger backlogs then originally contemplated, making the risk of not capturing all the material originally required to be in place substantially larger. See SECY-97-154, attach. 1, at 3. Putting aside the question of the validity of these reasons, (8) each is something over which the potential parties, other than DOE and NRC, had little or no control. Therefore, the upshot of this change is that, because of the inability of DOE/NRC to make the LSS work, the parties now must accept access to a more restricted universe of available documents while continuing to have their ability to conduct regular document discovery sharply curtailed. This may prove to be a difficult concept for the

agency to explain to the parties' satisfaction, particularly in light of the parties' previous dissatisfaction with agency-initiated changes in the original negotiated rulemaking. See 56 Fed. Reg. 7787, 7788 (1991).

With the number and diversity of the documents involved in the HLWR application and review process, questions of relevance are difficult to address in the abstract. Clearly, however, the preapplication disclosure process currently embodied in Subpart J to ensure the agency is able to fulfill its licensing responsibilities in a timely manner has a significant impact on the parties' ability to invoke the discovery processes they normally are afforded under the agency's rules of practice. It also has significant implications as the preapplication avenue for resolving or avoiding discovery-related disputes that can delay the postapplication adjudication. ASLBP thus continues to favor the existing definition that arguably leaves less discretion to a party (such as DOE) to exclude materials from disclosure. If, however, the Commission believes the existing definition is no longer viable, then at a minimum any new definition of "documentary material" for preapplication disclosure must clearly encompass all party reports and studies, including all related "circulated drafts," relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69 regardless of whether they are being "relied" on and "cited" by DOE or others.

III. CONCLUSION

The HLWR proceeding has the potential to be one of the largest and most complex federal administrative adjudications ever conducted. In originally adopting 10 C.F.R. Part 2, Subpart J, the Commission acted to ensure that the parties, and particularly the nonfederal participants, could take in the HLWR licensing proceeding with some confidence that they were receiving all relevant information and so could frame and litigate issues fully and fairly. Ultimately, any changes to Subpart J should be scrutinized to make sure this goal of ensuring fair and meaningful participation is not compromised.

To this end, ASLBP recommends that the Commission (1) direct that an independent systems/cost-benefit analysis be undertaken to determine, in light of technological advances over the past ten years, the best manner for establishing and operating the preapplication document discovery database for the HLWR proceeding; and (2) retain the existing Subpart J definition for the "documentary material" that would go into that system.

Footnotes:

[1] By its very nature, the Internet is an evolving technology undergoing development without a strong, central point of control. Thus, besides the problems of intermittent failures and security, using an Internet-based system has the potential to bring into play a number of elements that could be the cause of disputes or delays, including lack of standardization in telecommunications hardware and software, server technology, and party work processes, and cost uncertainties due to possible telecommunications transmission charges and taxes.

[2] The CLAD system, which has been operating for approximately five years in the Delaware state courts, was designed for use in complex, multi-party litigation. The system has two components, an automated docket and a database of party pleadings, both of which are operated using the existing LEXIS-NEXIS legal database system. Parties are charged a per-document fee to file documents electronically in the database, which also can be electronically served on other parties to the proceeding. Parties also have twenty-four hour, toll-free electronic access both to the court docket and a LEXIS private library that allows full-text searches on all docketed filings at LEXIS commercial rates.

In its present form, the CLAD system is more analogous to the electronic docket that would be a component of the LSS. It may be, however, that something like it could be developed with LEXIS/NEXIS or with WESTLAW, the other commercial entity that has experience in managing large legal document databases, to contain and provide access to a centralized HLWR discovery database.

[3] The proposed statement of considerations makes the standard reference to a regulatory analysis, which ASLBP understands is currently being prepared. See SECY-97-154, attach. 1, at 9. It might be that the study ASLBP recommends herein could be done in conjunction with, or in lieu of, that analysis.

[4] ASLBP agrees with SECY-97-154 that, assuming adequate funding is provided for timely development, an electronic docket for filings in agency adjudicatory proceedings constructed outside the LSS framework could serve as the electronic docket for the HLWR proceeding. In doing so, however, care must be taken to ensure that the systems architecture of any discovery database (or databases) is fully compatible with the electronic docket so that materials can be transferred easily into the electronic docket.

[5] The availability of the FOIA, 5 U.S.C. § 552, means that notwithstanding the more limited definition of "documentary materials," the nonfederal parties may still have access to DOE and NRC materials "relevant" to the HLWR that they would have had access to under the existing Subpart J definition. As originally designed, the LSS was intended to defuse any party incentive to use the FOIA by making all potentially relevant HLWR-related materials available without having to invoke the DOE or NRC FOIA processes, thereby saving time and resources for the parties and the agencies. The new, arguably less comprehensive definition may spark party interest in the parallel use of the FOIA. This, in turn, increases the possibility of FOIA-related delays, such as disclosures that result in postapplication issues about the reasonableness of preapplication party document disclosure determinations. If found to be meritorious, these issues could require additional postapplication discovery that could delay the proceeding.

[6] The LSSNet Subpart J proposal defined documentary material as "material or information that a party or potential party plans to produce either during discovery by subpoena or deposition or during the licensing of a likely candidate site for a geologic repository."

[7] What the parties' views are on this definition, or indeed on the major benefits of Subpart J they wish to retain, is less than clear. Despite the considerable efforts of those involved with the LSSNet to get the potentially affected parties to comment on possible changes to Subpart J, they provided little informative input. This lack of participation likely is not assent; it is equally possible to infer they are biding their time and conserving their resources until the agency actually proposes something concrete.

[8] For instance, the question of old documents becoming irrelevant arguably is one that can be addressed adequately in ways other than changing the definition of what the database should contain. Prior to the decision to delay any further LSS development in conjunction with SECY-96-178, the LSSARP had some discussions about the problem of narrowing the scope of relevant documents. If continued and intensified, these discussions might have resulted in LSSARP recommendations limiting the scope of "relevant" documents in the LSS database. By the same token, the concern that documents may not have been identified apparently is footed in concerns about DOE maintenance of contractor reports based on a review of some of the documents contained in a Washington-area DOE HLWR document storage facility. As far as ASLBP is aware, however, there has never been any formal attempt to discuss this concern with DOE or obtain its position on whether it can or cannot meet the requirements of Subpart J to provide access to "relevant" contractor documents.

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U.S. Nuclear Regulatory Commission
Staff Requirements Memorandum
SRM-97-154

September 23, 1997

MEMORANDUM TO:
John T. Greeves, LSS Senior Management Team
Arnold E. (Moe) Levin, LSS Senior Management Team
William J. Olmstead, LSS Senior Management Team

FROM:
John C. Hoyle, Secretary

SUBJECT:
STAFF REQUIREMENTS - SECY-97-154 - RESOLUTION OF LICENSING SUPPORT SYSTEM (LSS) ISSUES AND DRAFT PROPOSED RULE, 10 CFR PART 2, SUBPART J

The Commission has approved Option 4 subject to the comments provided below. The LSS Senior Management Team (SMT) should incorporate these comments and submit the proposed rule for publication in the Federal Register and public comment.

SMT SECY Suspense 10/31/97

The Commission preliminarily supports the proposal to introduce an informal users group as an alternative to a modified LSS Advisory Review Panel (LSSARP). The informal users group should make use of current LSSARP members with knowledge and experience of the LSS process, if feasible and appropriate. Public comments should be sought on these alternatives, including specific response from potential parties to the HLW repository licensing proceeding on their interest and support for the informal users group alternative. The Commission reserves final judgment on this proposal until after review of the comments on the proposed rule.

The definition of "documentary material" to be included in the system should be modified by adding the following at the end of the first sentence in the definition in Section 2.1001 (page 11):

> and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant or party, including all related "circulated drafts," relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party.

The same addition should be made to the paragraphs discussing documentary material on page 4 (third full paragraph) and on page 5 (third full paragraph).

In addition, the following editorial changes should be incorporated in the Federal Register notice.

1. On page 2, first full paragraph, line 15, delete the comma after 'process.'
2. On page 3, paragraph 1, line 2, insert 'pursuant to its agreement' after the semicolon.
3. On page 4, third full paragraph, line 2, replace 'and' with a comma.
4. On page 5, third full paragraph, line 2, replace 'and' with 'and/or.' In line 3, replace 'and' with a comma.
5. On page 7, in the paragraph on Section 2.1011, line 1, insert 'to' after 'revised.' In the paragraph on Section 2.1012(a), insert 'it' after 'if.'

6. On page 10, in the heading for Part 2, replace 'ND' with 'AND.'
7. On page 11, in the paragraph under 'Definitions,' line 2, replace 'and' with 'and/or.' In line 4, replace 'and' with a comma.
8. On page 17, item (6), line 6, insert 'of 1954' after 'Act.' In line 14, insert 'the entity in violation' before 'may.'

After receipt and analysis of public comments, the SMT should submit the proposed final rule for Commission review before it is finalized.

SMT SECY Suspense 5/15/98

cc:
Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
EDO
OGC
CIO
CFO
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR
DCS

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LSSNet Postings
11/01/96 - 02/25/97

Welcome!

LSS Rulemaking Issues

The Licensing Support System (LSS) concept grew out of the Nuclear Regulatory Commission's concern regarding how best to review the DOE license application for a high-level radioactive waste (HLW) repository. A centralized, electronic database, accessible by all parties appeared to offer the opportunity for significant time savings in conducting the licensing proceeding for the repository and, simultaneously, for the enhancement of any party's opportunity for effective participation. Plans for the LSS were first initiated in 1986 and were based on computer technology available in that time frame. It was intended to provide a central, shared, federally funded database of licensing information beginning in 1995. Budgetary shortfalls, however, and the unanticipated length of time that it would take to develop the licensing application for the repository, not only delayed the development of the LSS, but also resulted in the accumulation of a tremendous amount of potential licensing information, much of which may no longer be relevant to a licensing proceeding which may not begin until about 2002. In addition, since document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture all relevant material in the LSS is substantially larger than originally assumed. While the development of the LSS remained stalled, the state of technology in document automation and retrieval overtook the technology of 1986 on which the original LSS was to be based. With the widespread and common place use of computers to generate and maintain the documents of a party to the HLW licensing proceeding, the universal availability of the Internet to tie disparate and geographically dispersed systems together, and the availability of commercially available software applications relevant to LSS functionalities, the centralized LSS envisioned at the time the LSS rule was developed may be obsolete. Consequently, the Commission intends to evaluate how these new technologies can be integrated into the LSS rule while still maintaining the primary functions of the LSS:

1. A mechanism for the discovery of documents before the license application is filed;

2. Electronic transmission of filings by the parties during the proceeding;

3. Electronic transmission of orders and decisions related to the proceeding; and

4. Access to an electronic version of the docket.

It is the intent of the NRC staff to focus this rulemaking on how best to address changes in technology in regard to the LSS. There is no intent to re-visit the basic functionalities of the LSS that are reflected in the current 10 CFR Part 2, Subpart J.

To attempt to address these issues, the NRC is posting the following "topics" to guide the discussion during this phase of LSSNet. Other topics may be considered for discussion after review in the Administrative Forum.

Topic 1 - What are the costs and benefits of moving from a dedicated, centralized system to a distributed system based on the Internet?

Topic 2 - How should other improvements in computer

technology be incorporated into the LSS?

Topic 3 - What provisions of the LSS rule will need to be changed to reflect the incorporation of new technologies?

Topic 4 - How should the backlog of "uncaptured", and possibly irrelevant, repository-related information be addressed?

Topic 5 - What would the role of the LSS Administrator be under a distributed system?

Topic 6 - How should advice from potential users of the LSS be provided for?

Topic 7 - Can DOE file an electronic application in hypertext?

LSSNET Caucus Area 1: What are the costs and benefits of moving from a dedicated, centralized system to a distributed system based on the Internet?

New Topic: costs and benefits
From: Chip Cameron fxc@nrc.gov
Date: 1/3/97 12:44 PST
Thread ID: 1:1

Boy, it's lonely in this caucus! Maybe the absence of discussion on this issue signifies that most, if not all, of us are generally convinced that a distributed system is not only more efficient but also more effective. Therefore, the important issue is what are the implications of a distributed sytem for Subpart J. On to Topic 3!

Issue: costs and benefits
From: Dan Graser djg2@nrc.gov
Date: 1/9/97 7:38 PST
Thread ID: 1:1.1

I think there are a number of issues related to costs that need to be addressed. In the "old" scenario, costs for design and implementation of a centralized system would have been absorbed under a DOE budget item. Costs for maintenance and operation would have been absorbed under an NRC budget item. In the "new" scenario, each party puts up its collection of documents on its own "external" document file server, and populates its' own machine with its' collection of documents. This represents a transference of costs from the government to the participants. Given the loss of oversight funding authorizations in the past couple of budget cycles, the implication is that the affected parties would have to find funding from their own resources.

There may be an opportunity for a consortium of affected parties to collaboratively fund a single location, thus cutting out some duplication of hardware expenditures, administrative costs, staffing, etc. There are internet value added vendors who could provide turnkey services of this type. Food for thought.

Qualify: costs and benefits
From: Chip Cameron fxc@nrc.gov
Date: 1/10/97 13:30 PST
Thread ID: 1:1.1.1

This is a good point related to cost allocation resulting

from a change from a centralized system to a distributed system. Are there any other cost allocation issues that we haven't identified yet that might flow from a change in the system?

Agree: costs and benefits
From: John Dossett Jdossett@pop.erols.com
Date: 2/3/97 14:28 PST
Thread ID: 1:1.1.2

This cost transfer to the participants in the licensing could be particularly burdensome to an "affected Indian tribe" (if any are designated under the NWPA) because most tribes do not have the information infrastructure that other participants in the licensing proceeding will have. Nevertheless, because a distributed system the Internet will probably result in greater access by tribal governments generally, NCAI supports the concept of a distributed system so long as the appropriations and implementation of this system include appropriate resource assistance to affected tribal governments.

Issue: costs and benefits
From: Dan Graser djg2@nrc.gov
Date: 1/9/97 7:45 PST
Thread ID: 1:1.2

The cost models developed by the LSS Administrator staff for the costs for NRC's compliance assessment program will need to be re-done as the prior cost model is no longer valid.

If, indeed, we have some "black market" LSSNet functionalities already starting to sprout up. Systems are already being fielded without any agreement on the tagging and presentation of structured data and as each day passes, we also have data that is populating this system for which we do not know if the data is true and accurate, no audit trail from its origination source, etc.

The bottom line is that the compliance assessment program even if only for doing a quality check on somebody elses' "self-certification" is going to have to be revised very quickly and put in place very quickly. The LSSNet is already happening. The cost issue here is that the Commission has no FY 97 budget for doing this work...

Agree: costs and benefits
From: Chip Cameron fxc@nrc.gov
Date: 1/10/97 13:22 PST
Thread ID: 1:1.2.1

This also seems to be an excellent point for Topic Area 5 on the role of the LSS Administrator under a distributed system. How quickly do we need to move on a new compliance assessment program?

Answer: costs and benefits
From: Moe Levin ael1@nrc.gov
Date: 1/27/97 9:39 PST
Thread ID: 1:1.2.1.1

In answer to Chip's question on how quickly we need to move to a new compliance assessment program: We should have done it six months ago if the distributed LSS ever becomes a reality. As Dan said in his comment, organizations are

already making "LSS material" available via the Web - but not in any coordinated fashion. This means that some of this effort will likely have to be redone when standards are in place. The sooner we get a compliance program in place, the less re-work will have to de done. Since there aren't any funds currently available to modify the exsiting Compliance and Assessment Plan, we can't start any new activity in this area until the decision on the future of the LSS is made. As in most LSS-like situations, the longer it takes to make fundamental decisions, the more it ends up costing in the long run.

LSSNET Caucus Area 2: How should other improvements in computer technology be incorporated into the LSS?

New: References to Computer Technology Should Not Be in the Rule
From: Bill Olmstead wjo@nrc.gov
Date: 11/14/96 11:21 PST
Thread ID: 2:1

I don't see why it is necessary for references to computer technology to be in the procedural rules. Under the recent amendments to the Paperwork Reduction Act, the agency is going to have to provide standards for electronic filing. These will be applicable to all NRC processes. These will be the same standards that should apply to the adjudication associated with the repository.

Qualify: References to Computer Technology Should Not Be in the Rule
From: Brad Mettam bmettam@telis.org
Date: 11/14/96 15:51 PST
Thread ID: 2:1.1

Avoiding the discussion of specific computer technology makes sense.

That was what was tried in the negotiated rulemaking, when the emphasis was on making it "platform independent". The problem was, nobody ever built the LSS, so that it could evolve with the technology. We need to retain the key *concepts*, while exercising a prototype that can evolve into what we need.

New: Can we use WEB technology to create a "smart" License Application?
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 11/20/96 17:10 PST
Thread ID: 2:2

What IF, the License Application and the LSS were actually one thing? IF the SAR were generated in hypertext with connections to all the references (and documents considered but not used were cited) would that do more to speed the review process than the current LSS concept? Are we then talking about an electronic sub-part G? What do you think?

Qualify: Can we use WEB technology to create a
From: Bill Olmstead wjo@nrc.gov
Date: 11/21/96 7:51 PST
Thread ID: 2:2.1

I like the idea of a hyperlinked application document particularly if the document goes beyond HTML extensions (say SGML) so that the data elements can be used and document integrity is more likely. Clearly, this approach could be used to satisfy DOE's obligation to certify those things that it wished to rely upon. There remains, however, at least two large classifications of documents that were to have been in the LSS -- 1) DOE documents that could be relevant to any given party's issues in the proceeding but which DOE does not choose to defend or rely upon; and 2) documents belonging to other parties that they may or may not intend to rely upon but which are relevant to issues in the proceeding.

It is not my position that these two classifications should be identified now nor that they should necessarily be converted to an electronic form. If they are not, however, we need to discuss how to handle them. One obvious way is to eliminate all references to the LSS as an automated or electronic database and handle electronic conversion, storage, and retrieval in whatever manner is routinely provided in Subpart G at the time of the DOE application in the future.

Alternative: Can we use WEB technology to create a
From: Dan Graser djg2@nrc.gov
Date: 11/21/96 8:55 PST
Thread ID: 2:2.2

Why limit this to an electronic license application? If the LSS database contains any document that any party intends to submit in an evidentiary capacity, and any deposition, and then the electronic hearing docket contains daily transcripts of the hearings, the logical extension is to have the LSS be utilized beyond just the submission of an electronic license application. The hyperlinking that identifies your license application is "the LA thread", and there could be similar threads for "motions", "decisions", "proposed exhibits", "accepted exhibits", "hearing transcripts", etc. The phases after license submission continue to build upon the file collections and move from potential evidentiary, to the submitted application, right on through to the hearing phases.

The stringent criteria for document pedigrees and authentication for the submission of potentially relevant evidentiary materials into the LSS in the first place should be an adequate foundation for meeting other federal evidence and practice (or the NRC specific variant, if any) rules requirements later on in the hearing and post-hearing processes. Indeed, the rule always anticipated an electronic hearing docket, anyhow.

Having said all that, the first question is how are we going to submit "the record" which is organized and structured by such electronic hyperlinks, to the NARA for retention and maintain or replicate the organization of information? The second question is who will be responsible for setting the electronic hyperlinking across domains? (e.g., DOE wants to set a hyperlink to an item that is sitting on the NRC machine...)

Answer: Can we use WEB technology to create a
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 12/9/96 15:58 PST
Thread ID: 2:2.2.1

I'm not sure we're talking about the same thing, but let me try this.

What I am thinking about is that in writing the License Application, the authors would include in their discussion all potential references to a particular topic (like we didn't do in the erosion topical). Not just the references that support the arguement, but also any references that were considered and not used and the reason why. The citations in text would be linked to the bibliography (to provide a clear delineation between the LA and the supporting information) and the bibliography could then be linked to the optical images and ascii text that we are generating as a part of records reprocessing. If the DOE uses a document generated by the State or the NRC, we could either include the document in our database (redundancy is not that big a deal is it?) or somehow set the links to the document in its "home" location". We could also link to databases like GENISES to allow use of the technical data, to videos (say of the core that was scanned as it came out of the drill hole), to oversize or color pictures, to 3-D models, etc. Does NARA accept optical disk? The hyperlinks wouldn't go anywhere, but then neither do citations on a piece of paper.

That would still leave a subset of information that could conceivably be of value in licensing, but that could be accessed through a text search function as originally envisioned for LSS.

Agree: Can we use WEB technology to create a
From: Bill Olmstead wjo@nrc.gov
Date: 12/11/96 10:51 PST
Thread ID: 2:2.2.1.1

I need both an "agree" and an "answer" icon for this. First, I like your suggested approach (subject, of course, to the assumption that the costs of putting the application together as you describe are appropriate). Second, the NARA achival issue is still unresolved. For archival purposes beyond 10 years, we must still provide the archive copy on acid-free paper or diazo(sp?) micro-fiche. Should we plan on this continuing to be the situation for the next three to five years or should we confidently predict that the march of technology will make it necessary for NARA to prescribe a more technologically friendly strategy?

Disagree: Can we use WEB technology to create a
From: Dan Graser djg2@nrc.gov
Date: 1/9/97 7:21 PST
Thread ID: 2:2.2.1.1.1

Bill: I don't think the NARA archival issue is an open question any longer. NARA Bulletin 94-4 states that "The CD-ROM medium is acceptable for the transfer of electronic records to the National Archives under the conditions that are specified in paragraph 4 of this bulletin."

Bulletin 94-5 addresses the use of optical disks for storing records within the agency prior to transfer to NARA.

[Public] New: Specific Technology used will shape the message
From: Donald Coates DCoates@efaches.navfac.navy.mil
Date: 12/23/96 7:23 PST
Thread ID: 2:1

Thirty years ago McLuhan said "The medium is the message." To avoid references to specific technology is to presuppose the information ("message")will not be influenced by the technology used to present it.

A manually prepared columnar pad & pencil presentation of financial data is significantally different from an Lotus, Quattro or Excel presentation of the same data. The latter is likely to include graphics, extended details, calulations and visual emphasis the pre PC technology seldom used because the labor required was more costly than what the additional details were worth.

The real question about the inclusion of specific technology standards is "So What??". To the extent we must all speak the same language or adequate provision for competent translation, we of necessity must specify a generic technology base and standards for technology translation.

[Public] New: The hyperlinks wouldn't go anywhere
From: Donald Coates DCoates@efaches.navfac.navy.mil
Date: 12/23/96 7:55 PST
Thread ID: 2:2

It would sure be easier if public commentors could reference threads in the "password protected" forum. Not post there, just reference threads there.

The Graser, Newbury, Olmstead thread is an interesting discussion. I was pleased that Bill Olmstead was concerned with cost effectiveness. Just because modern technology allows us to put the dictionary in the record doesn't mean we should do it. There needs to be a very clear focus on the really "relevant" information needed and what is truly "support" data to be referenced and not included. The tendency to include too much data when using the new technologies "fuzzes" the issues for the decision makers.

[Public] Agree: The hyperlinks wouldn't go anywhere
From: Bill Olmstead wjo@nrc.gov
Date: 1/2/97 8:27 PST
Thread ID: 2:2.1

I agree that we need to do a better job concerning linking "threads" as well as "topics" between the password protected "forum" and the public comment area. I will ask the knowledgeable people about that. Since you mentioned costs, however, I should explain that we are using the perl scripts that were developed in the "RuleNet" demo last year with no significant money to change the fundamental tools already developed, so I wouldn't want to say that we can absolutely do it.

[Public] Agree: The hyperlinks wouldn't go anywhere
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 2/10/97 13:31 PST
Thread ID: 2:2.2

You are getting back to the heart of the issue of the universe of LSS material. In the current reg (10 CFR 2 subpart J) ALL information that is discoverable or could lead to discovery has to be included in LSS. That's a lot of potentially irrelevant stuff. What is not seen as relevant by the license applicant may be important to an intervener, so what do you comfidently leave out of the LSS? The virtue

of hyperlinking from a license application to the relevant records is that the applicant clearly defines what was used or considered in writing the LA (the supporting information) so that any interested party/intervener can go right to the information to review the bases for the applicant's conclusions. The remaining stuff is still available if someone wants to sort through it. In short, everything is already "included" the question is, is it accessible?

[Public] Agree: The hyperlinks wouldn't go anywhere
From: Bill Olmstead wjo@nrc.gov
Date: 2/13/97 12:48 PST
Thread ID: 2:2.2.1

I had John Voglewede start a new thread to discuss a hyperlinked application based on your earlier comments. I would NOT include every document that might be "relevant" and therefore part of the document database as originally envisioned. I think your idea of linking the documents that DOE believes are important to the electronic application is terrific. NRC has a pilot "BPR (Business Process Reengineering") project ongoing for small materials licenses where hyperlinks are a key ingredient to the application and its review by NRC. Each step in developing the electronic database (docket in our nomenclature) requires the applicable person to add links. Thus, the applicant identifies the key technical information, the regulatory compliance approach, and fills in the application by referencing through links the regulatory provisions involved. The staff review builds on this and if it were to go to a hearing presumably the parties would build on the combined hyperlinked document. We ought to pursue this approach more vigorously.

LSSNET Caucus Area 3: What provisions of the LSS rule will need to be changed to reflect the incorporation of new technologies?

New: Use Subpart G
From: Bill Olmstead wjo@nrc.gov
Date: 11/14/96 10:53 PST
Thread ID: 3:2

Given the fact that no Licensing Support System has yet been developed and that the use of electronic technology is being rapidly assimilated into general trial practice, it seems to me that we ought to discuss whether it is necessary to focus on the technology at all. Perhaps, we should recommend just following standard adjudicatory practice as it exists at the time of the DOE application and focus instead on whether access to documents can be granted at some earlier time.

Qualify: Use Subpart G
From: Chip Cameron fxc@nrc.gov
Date: 11/19/96 6:17 PST
Thread ID: 3:2.1

I'm assuming that when Bill suggests going back to Subpart G that this would not exclude the continued development of electronic information mangement systems containing pertinent licensing information on the repository, including the development of a distributed internet system comprised of information from all of the potential parties' data bases. Under this scenario,the primary difference between a Subpart G framework and a Subpart J framework would be the

legal requirement for potential parties to contribute information of a certain type in a particular timeframe. Query what the practical consequences of a return to Subpart G would have on the electronic availability of useful licensing information from a broad spectrum of parties before the license application was filed.

New: Some provisions to look at: the short list
From: Dan Graser djg2@nrc.gov
Date: 1/9/97 7:52 PST
Thread ID: 3:3

The "old" rule locks a record down. If there are changes or updates, a new record gets added and references the superseded-but-not-deleted previous record. How are we going to validate a record having been locked down? How are we going to ensure the the superseded version is not deleted from a machine that is not under the LSSA's control.

PDR access was written into the old rule. Is it cost effective to continue to provide that sort of access (for the "non-wired") when 10 to 20 million of the public would have access via the internet? Not that the PDR access is such a big deal to put a terminal there, it is just a question if the rule needs to specifically call that out anymore. The "old" rule requires that the LSS shall maintain an electronic docket. In the "new" rule, we are maintaining a virtual docket electronically.

How would an internet user access "one-of-a-kind" things? Probably a pointer to a point-of-contact person.

In the "old" rule, there was provision that users could request paper copies of search results, and that would have been provided by the LSS Administrator. In the virtual LSSNet, there is no single one place to request this from since holdings may be on 20 different home pages. And if a request for hard copy went to, say, Clark Co. for hardcopies of some of their studies, there is a cost associated with meeting that request. Who pays? In the "old" LSS, that cost and that service was provided by the LSSA under NRC budget.

Supplement: Some provisions to look at: the short list
From: Chip Cameron fxc@nrc.gov
Date: 1/10/97 13:38 PST
Thread ID: 3:3.1

See Dan's comments in Caucus Area 1 for some additional cost allocation issues that need to be considered.

LSSNET Caucus Area 4: How should the backlog of "uncaptured", and possibly irrelevant, repository-related information be addressed?

New: universe of LSS material
From: Chip Cameron fxc@nrc.gov
Date: 11/19/96 6:41 PST
Thread ID: 4:2

I believe that one of the most difficult issues for the successful development of the LSS, both from a logistical and cost viewpoint, has been the definition of the document universe for inclusion in the data base. Essentially, other than the "relevance" criterion, the document universe is pretty open-ended. Originally, the negotiating committee had

discussed limiting the document universe to relevant material generated during a particular timeframe(e.g., onward from the NWPA enactment date of 1982). This concept was not adopted by the negotiating committee. However, given the long delay in both the submission of the repository license application and in the development of the LSS, wouldn't it make sense to establish some new criteria for the document universe? In addition to looking at some type of "time" criterion, aren't there some issues that are no longer even relevant that could be excluded from the data base? I would also note that even under Bill Olmstead's suggestion in Caucus Area 3 (a return to Subpart G), we could still benefit from the development of electronic information mamgement sysytems for repository licensing. I believe that developing a more finely tuned document universe would also be relevant to these "non Subpart 2" systems.

Supplement: universe of LSS material
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 11/20/96 14:17 PST
Thread ID: 4:2.1

There are really two sets of information that need to be considered as to their relevence. The first set are all those documents that the DOE considers and uses (or decides not to use) in developing our licensing arguments. They are easy to identify and load into the LSS as we develop the SAR and LA. The other set is all that other old stuff that might or might not be useful. I agree that there should be some time limit on that - (hypothetical)e.g. is it really relevant that in 1975 DOE thought that a cold repository was a good idea? Would DOE have to show that its current design considered that old an idea?

DOE will begin reprocessing its records in March, as we go through and scan/OCR those records, it would be good to know if there are some that don't need to be reprocessed because they are no longer considered relevant. Or, if they are only marginally potentially relevant (like data from BWIPP or the Salt program, can we just keep them as hard copy and generate headers only?

Agree: universe of LSS material
From: Chip Cameron fxc@nrc.gov
Date: 11/21/96 6:26 PST
Thread ID: 4:2.1.1

Good points, Claudia. I agree in principle that we should really be focussing on the most important and basic licensing material. It's also important to remember Bill Olmstead's message about the ability to document major decisions in the DOE and NRC program. However, some of these decisions may also no longer be relevant to the current program. The challenge is on how to weed this material out. Can anybody suggest a methodology to accomplish this? Can we agree on what the "basic" licensing documents are that should be in the system? I would hope that we could reach closure on this issue before you expend funds unnecessarily on capturing extraneous material. Is there anybody out there who is absoluteluy opposed to attempting to streamline the document universe requirements?

Supplement: universe of LSS material
From: Brad Mettam bmettam@telis.org
Date: 11/22/96 8:43 PST

Thread ID: 4:2.1.1.1

I am not opposed to the filtering of documents, with the goal of retaining those that either relate to key DOE decisions, or are used by DOE to support a decision. The key is to have an understanding and agreement as to which documents those are.

I have long argued that DOE should be capturing documents in electronic form, for two reasons: 1) If you create a document electronically, it only makes sense to avoid the potentially error-introducing process of moving from media to media and back again, and; 2) I dread the possibility of receiving a huge slug of scanned documents when DOE is finally ready. The problem gets worse if you decide to use the Internet as a conduit for these documents. Sitting out here in California with my 14.4 modem, I'm going to get old(er) and gray(er) before I download and sort through documents sent as scanned images. When we lose the LSS in its original form, we also lose the platforms that were intended to host it at the different access points. This may be another case of introducing a technology constraint, only to watch it fade away as time passes, but it is a concern when documents are images, rather than text.

So, reduce the total volume - but do it by requiring DOE to record the technical and policy documents that led to key decisions. For example, is it important to understand why DOE decided to focus on TBM break-out, at the expense of surface-based and underground scientific investigations? If so, you need to capture the exchange between Wesley Barnes and the NWTRB, at the NWTRB meeting where Mr. Barnes was advised to seriously consider the likelyhood that Congress considered TBM advance to be the measure of progress at the site. Until that time, the plan had been to interrupt, or even stop, TBM advance prior to break-out. DO DOE's memoranda of decision record all the key precedents to a decision? If so, great. If not, then this debate will continue.

Agree: universe of LSS material
From: Bill Olmstead wjo@nrc.gov
Date: 11/22/96 11:43 PST
Thread ID: 4:2.1.1.1.1

I agree that we need fast text search engines and don't want to be sending images around the internet at current speeds. (I note, however, that at the speed the technology is changing we will have two generations of improvements before the license application.) I also agree that it should be possible to start focusing on the key documents that everyone agrees should be on-line and accessible. Since the backlog that wasn't supposed to happen is with us, I think we should also discuss how to give interested persons access to that material so that they can begin to identify what they would like added rather than assuming that it all will be added and some undefined future date.

Qualify: universe of LSS material
From: Chip Cameron fxc@nrc.gov
Date: 1/3/97 13:04 PST
Thread ID: 4:2.1.1.1.2

Great idea, Brad - it's what Bill Olmstead has been trying to drum into our heads all along! However, how feasible is it to do this in retrospect at this point? How would we set up the format to guide this documentation process, either

for the past or the future? Would it be organized by the section of part 60, for example? Does DOE have an issues hierarchy that can be used?

Supplement: universe of LSS material
From: Dan Graser djg2@nrc.gov
Date: 1/9/97 8:06 PST
Thread ID: 4:2.2

Relevance is in the eye of the beholder (personal opinion).

More germane is that the LSS is a discovery tool. We know our filing structures, document formatting, abbreviations, acronyms, etc., quite well but our "organization and presentation" may not be intuitive to others just as theirs are potentially not intuitive to us. The great equalizer for finding the needle in the haystack during discovery is to use full text search engines with all their power. I think that the focus on trying to narrow down the collection is good because it means that there is a smaller haystack. But, it is the other person's opinion of what should be in the haystack that has always been problematic, because they really don't know what should be included by another party unless they have somehow pre-screened it first. I guess I'm trying to say that I don't understand how someone could use date-based or document-based screening criteria (the easiest to apply for narrowing the content) when it is the issues that define relevancy, and issues don't fall nicely into or out of a screening (or discovery) process that makes the cuts based on objective criteria.

And, I don't see how we can determine what might or might not be useful for DOE to convert in their backlog processing without first having the other parties screen it by their criteria for relevancy.

There seem two obvious solutions but perhaps there are more: 1) enter them all in full text and let the users search criteria be the ultimate arbiter of what meets relevancy (this is, however, costly for conversion...) or 2) have potential parties participate in prescreening the DOE backlog and flag the documents they want to have put in. Alternative #1 above does address the issue of the "relevancy in the eye of the beholder" syndrome. Text retrieval levels the playing field regarding making content "knowable": I believe that header-only for the possibly "marginally relevant" just isn't going to provide similar leveling. Alternative #2 is a viable option because I have seen it work on the consolidated discovery and filming operations that were used in the asbestos litigations when going thru Navy Record Groups at Suiteland. Put the boxes out on the floor, Manville goes thru them and flags the docs they want, then Eagle-Picher goes thru and adds a few more flags to what Manville did, then the next, and the next, etc. In the end, all the flagged docs were filmed and 10 sets of film were made so that everybody got what everybody flagged. No unhappy customers. Again, just food for thought.

Qualify: universe of LSS material
From: John Greeves JTG1@nrc.gov
Date: 1/13/97 11:18 PST
Thread ID: 4:2.2.1

In reading the comments so far it is obvious to me that we should start a list of documents that should be in the LSS and let others add to the list over time. The list should include the Viability Assessment, NRC's annual progress

reports, the Standard Review Plan when we get resources to produce one, and any specific issue resolution reports produced over time. Putting in old design documents that are outdated are a waste of time and resources in my view. Documenting major DOE decisions is important, if we could get people to identify what they consider major decisions that would help. Too much information will dilute all of our efforts.

LSSNET Caucus Area 5: What would the role of the LSS Administrator be under a distributed system?

New: No LSS Administrator a Possibility
From: Bill Olmstead wjo@nrc.gov
Date: 11/14/96 11:03 PST
Thread ID: 5:2

Unstated by implied by this topic is the question, "Do we continue to need an LSS Administrator if there is not to be a central computer to administer?"

Agree: No LSS Administrator a Possibility
From: Chip Cameron fxc@nrc.gov
Date: 11/21/96 6:18 PST
Thread ID: 5:2.1

I agree with the implied question. To start the discussion off, I would ask why we wouldn't need some entity - and wouldn't the LSS Administrator be the most appropriate entity- to ensure that the relevant material was identified and placed on the party's node on the distributed system. However, I suppose an alternative would be to simply require certification by each party that they have procedures in place to identify the material and that they have placed the requisite material on the system. If people were comfortable with this approach, it seems fairly low cost and simple.

Qualify: No LSS Administrator a Possibility
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 11/21/96 14:55 PST
Thread ID: 5:2.1.1

Perhaps there would not be a requirement for the LSS Administrator as defined in subpart J, but certainly there should be one person we can all complain to when the network is slow or someone's machine is down. It will be necessary (if this is on the Web) to establish priority users, bumping privileges, so to speak, control passwords, etc.

Alternative: No LSS Administrator a Possibility
From: Bill Olmstead wjo@nrc.gov
Date: 11/22/96 11:51 PST
Thread ID: 5:2.1.1.1

Or alternatively, each participant would be responsible for either providing adequate access to that participant's material and the rule would required the designation of a contact within the participant organization when problems arose. The ASLBP would hear disputes and determine whether to fashion some solution. It is my assumption that the society in which we all operate will be somewhat more accustomed to interactive electronic socialization and the problems that we originally contemplated to necessitate an administrator will be minimal.

Supplement: No LSS Administrator a Possibility
From: Moe Levin ael1@nrc.gov
Date: 11/26/96 9:45 PST
Thread ID: 5:2.1.1.1.1

I agree that the problems originally envisioned for the LSSA to deal with will diminish over time as people become more accustomed to the Internet. However, if the LSS concept survives, no matter what form it takes, there has to be some focal point for it. There will always be a need for coordination, standards setting, policy making, responding to questions, etc. Someone has to be designated to worry about those things. To me, this is a given.

What needs to be decided is to what extent the LSSA would police vs. coordinate the activities of a distributed, Internet-based LSS.

Agree: No LSS Administrator a Possibility
From: Brad Mettam bmettam@telis.org
Date: 12/3/96 16:08 PST
Thread ID: 5:2.1.1.1.1.1

I'm glad that Moe moved the discussion away from consideration of the LSSA as some sort of webmaster moderator, and to a consideration of the broader policy conserns that arise, and will continue to arise, in the LSS. Remember, the outside world considers the NRC as a regulatory watchdog over the applicants. I doubt that many will be comfortable self-certification by submitters to the LSS that all relevant documents are there, especially in the case of DOE, where the volume of documents will make looking for a needle in a haystack an easy job, and where the level of trust (and confidence) is not the highest.

Speaking of the outside world, where are the rest of the LSSARP members? Perhaps someone could mail them the content of the threads to date, and urge their participation.

Agree: No LSS Administrator a Possibility
From: Chip Cameron fxc@nrc.gov
Date: 1/3/97 13:12 PST
Thread ID: 5:2.1.1.1.1.1.1

Brad - you're right, we need to contact everyone by email and urge their participation. Also see my 1/3/97 response to Claudia's message.

Answer: No LSS Administrator a Possibility
From: Dan Graser djg2@nrc.gov
Date: 1/9/97 8:28 PST
Thread ID: 5:2.1.1.2

I think the answer to "who do I call when the response is slow" is: nobody. If the NRC collection is not accessible, I can resolve that for you. If connectivity fails, I can't help you there at all. If machine search response time is slow, I could re-host you, but that could take months. If, for example a resident of Nevada, or even the President of the U.S., called the LSSA and complained about difficulty or slowness in getting into the DOE collection on one of your VAXes, the LSSA Admin. has no capability to "fix it ASAP" because it is DOE data, on a DOE machine, operated by DOE contractors, and none of that is amenable to taking

direction from the LSSA.

There is an extra layer of vulnerability, here. The above scenario could be technical, but it could also be fiscal. What if DOE has a budget shortfall in August and September and even if you wanted to, you couldn't fix a problem until after October 1?

While I agree with Brad and Moe's later comments that the discussion needs to look at the policy concerns, I see the potential for "the webmaster moderator" issue being very important, especially as the use of the system during the hearing approaches. There could be great levels of frustration if there is nobody to call.

New: How can we generate more participation?
From: Moe Levin ael1@nrc.gov
Date: 12/4/96 11:25 PST
Thread ID: 5:3

Following up on Brad's comment about lack of participation of the other members, what can we do to encourage/excite/motivate others to participate? If we continue at the current level of (non)activity, does that mean no one is interested in (or maybe financial capable of) worrying about the future of the LSS? If so, does this leave it up to NRC to make decisions without input/concensus from others?

Question: How can we generate more participation?
From: Bill Olmstead wjo@nrc.gov
Date: 12/9/96 6:57 PST
Thread ID: 5:3.1

Since the statistics (from the home page for LSSNet) indicate a fairly substantial number of observers (lurkers) and many who have web addresses indicating a LSS connection, I would not necessarily assume that there is a lack of participation. Another interpretation is that there is substantial agreement that something needs to be done by the NRC to update/change the LSS concept. If so, people may merely be waiting for us to propose something more specific. I will be prepared to do just that after the first of the year. In the meantime, I would be interested in any ideas (brainstorming) that observers may have concerning what changes should be made. For example, I believe we can eliminate Subpart J from 10 CFR Part 2 and add the information concerning the topical guidelines to Subpart A. We could change Subpart G to provide for electronic service of adjudicatory documents. The only significant issue traditionally occupying the LSS Advisory Committee that would then be left would relate to whether there are LSS administrator functions that could not be preformed by a prehearing ASLBP. There would also be an issue associated with pre-application access to documents that should be addressed.

Supplement: How can we generate more participation?
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 12/9/96 15:34 PST
Thread ID: 5:3.1.1

Brad voiced a concern that I, too, have been wrestling with. This does not seem to be a true forum for all the LSSARP participants. I don't know whether they are "lurking" and listening to the things that are being written, or perhaps

are uncomfortable with the format. I know that I end up writing and erasing numerous messages before I actually post anything. Also, there may be some reluctance to commit comments or suggestions to virtual paper. Perhaps we need one more face-to-face LSSARP to scope out the reactions to this medium. Bill mentioned that stats show some viewing by LSSARP types. What percentage of members have actually logged on?

To Bill's other point, [Ed: See Topic 7] In looking around the Net, I find that the state of Nevada has a listing of all its published documents (thanks, it looks good!) and DOE has RISWeb up, so there is a listing of all our documents, SWRI has a listing as well, so that covers part of the NRC holdings. I guess the point is, the LSS participants are providing access to documents now, without an LSS. Do we need the prescriptiveness of a regulation? Is there something mandated in subpart J that is not being or would not be done if we just used subpart G? If we use G, can I file the LA in hypertext?

Supplement: How can we generate more participation?
From: Chip Cameron fxc@nrc.gov
Date: 1/3/97 7:04 PST
Thread ID: 5:3.1.1.2

Claudia raises two important points in her message: 1) how to encourage more active participation of the LSSARP,and potential users generally, in LSSNET?; and 2) in light of the fact that the various potential parties are setting up electronic document sites, do we still need a prescriptive Subpart J type rule? Although I believe it may be more appropriate to address the first issue (participation) in Caucus Area 6 (potential users), I'll include my comments on both of the above issues in this message.

In regard to the need for a prescriptive regulation issue, the establishment of the individual electronic sites certainly presents a strong argument in favor of the distributed system suggested in Topics 1 and 2. However, whether this eliminates the need for a prescriptive regulation depends on additional factors. One of the primary objectives of the LSS was to eliminate the need for time-consuming document production after the license application was submitted. The "quid pro quo" for the parties "giving up" this traditional discovery opportunity was that all the "relevant" documents would be available in the LSS before the license application was submitted. This, in turn, necessitated the development of rules to ensure that the potential parties identified and provided access to all relevant materials in the period before the application was submitted. The fact that some of the potential parties (albeit the ones with the most documents) are establishing electronic document sites, or that we may have a distributed rather than a centralized system, is not dispositive on the continued need for Subpart J. We need to examine the original premise of eliminating document discovery after the license application was submitted. Is it still necessary to do this from a time and cost perspective? Is it good enough to have most of the relevant documents available before hand, necessitating only "supplementary" discovery under subpart G for documents that may not be in the various individual nodes? If we're not worried about all of the relevant documents of all of the potential parties being available before the license application is submitted, then perhaps we don't need Subpart J. We also need to ask whether there are other elements of Subpart J that are still needed, for example, the electronic motions practice. In this

regard, there may be potential rule changes on the horizon that would provide for this capability generally for NRC proceedings, thereby eliminating the need to provide for it in Subpart J.

In regard to participation, I have heard informally that we will be hearing from some of those LSSARP members that haven't participated yet. Some LSSARP members are straightening out some internal technical problems that have posed obstacles to their participation. Others have not participated because of funding problems. We'll soon be getting ready to move into Phase II of LSSNET where the NRC staff will take the comments on the first set of topics and develop a more refined set of issues on which we will request alternative solutions from the participants. I think the NRC should send out a notice to the individual email addresses of the participants notifying them that Phase II is coming and that they have so many days to post comments on the Phase I topics. I would agree with Claudia that a face-to-face meeting may be a good idea but I'm uncertain right now as to when this may be appropriate. This may become clearer as we move through LSSNET.

Supplement: How can we generate more participation?
From: Moe Levin ael1@nrc.gov
Date: 12/12/96 8:57 PST
Thread ID: 5:3.1.2

Before our last face-to-face LSSARP meeting I was also concerned about how well the panel would take to cyber meetings/discussions. That's why I made a point of bringing it up then. No one reacted neagtively to the suggestion then, and, even though everyone responded the email messages I sent after the meeting, I didn't receive one negative comment on plans for an LSSNet. We could consider another face-to-face meeting.

Hey, if anyone is still lurking out there, how about posting your thoughts on this. Are we lost-in-cyberspace? Is a face-to-face meeting desireable/feasible?

Qualify: How can we generate more participation?
From: Brad Mettam bmettam@telis.org
Date: 12/16/96 11:39 PST
Thread ID: 5:3.1.2.1

Several people have commented regarding the assertion that "lurkers" are out there from the LSSARP. Could we see the stats on that? I continue to hope that time-delayed "cyber-meetings" like this can serve to perform much of the detail work for the LSSARP. Certainly that hasn't been the case yet. There must be easier ways for NRC and DOE people to talk to each other, if that's what this is going to become.

I have two suggestions. First, we need to get the various active Threads formated on paper, and sent to the silent LSSARP members. Included with that should be a memorandum from Moe, describing (again) what we are trying to do here, with a strong suggestion that LSSARP members respond, either positively or negatively, to both the concept and practice of the LSSNET. Second, we need to come to some decision concerning the use of the material gathered in this forum. Can we say with some assurance that not participating in the forum has the same effect as not participating in the discussion at an LSSARP meeting? (I do not consider this forum equivalent to the meeting, but I do consider it

roughly equivalent to discussion at the meeting.)

If this forum is the equivalent of discussion at an LSSARP meeting, do we have members who are unable to participate? If so, we need an electronic version of ADA, where provisions are made to get information to, and receive postings from, those without electronic assess.

Issue: How can we generate more participation?
From: Bill Olmstead wjo@nrc.gov
Date: 12/20/96 5:29 PST
Thread ID: 5:3.2

Brad has suggested sending the threads posted so far to LSSARP members with a request to comment on the participation issue. I think that is a good idea. With respect to the issue concerning whether members have the capability to communicate electronically, however, I reject the implication that members are unable to do this. First, we verified everyone's capability at the outset. Second, the whole idea of the LSS from the outset was the use of enhanced computer technology. If electronic storage and communication is to be effective in improving the HLW proceeding, we must start learning how to use the technology effectively from the desktop.

Alternative: How can we generate more participation?
From: Brad Mettam bmettam@telis.org
Date: 12/20/96 8:31 PST
Thread ID: 5:3.2.1

I may not have completely explained my concern regarding the use of an electronic forum versus traditional meetings to elicit the views of the members of the LSSARP. I think we have made a leap when we assume that a participant that was prepared to use an LSS to provide access to electronic copies of documents is therefor prepared to participate in a time delay electronic conference.

I am not refering to a problem with equipment, but rather a dificulty in participating in the medium. How many of us know (or are) people who compose their correspondence on a yellow pad of paper? A medium where you put everything in writing, yet is intended to be nearly as free- flowing as a conversation, may make some participants tremendously uncomfortable (perhaps especially so for attorneys).

My point in suggesting a mailing to all LSSARP members was to try to elicit a reaction. Why aren't they participating? What might be done to make it better/easier? Do they have (legal, etc.) reservations about participating in a forum like this? Or are we just talking about items they are not interested in?

Agree: How can we generate more participation?
From: Moe Levin ael1@nrc.gov
Date: 12/26/96 13:10 PST
Thread ID: 5:3.2.1.1

I agree with Brad and think his suggestion has merit. I will look into the feasability and logistics of generating hardcopy threads for regular mail distribution. I will also see if the statistics on LSSNet hits can give us any clues. If some of our members haven't even visited LSSNet, maybe they will after seeing what has transpired to date.

Qualify: How can we generate more participation?
From: Chip Cameron fxc@nrc.gov
Date: 1/3/97 13:17 PST
Thread ID: 5:3.3

Moe - There have been several suggestions for encouraging participation (see my 1/03/97 reply to Claudia). Hopefully, we'll get some more action here as we move towards Phase II. However, ultimately, we'll have to rely on what we get from whomever participates and use our best judgement in making decisions.

New: Access to Topic 5
From: Dennis Bechtel DAX@Co.Clark.NV.US
Date: 2/12/97 11:08 PST
Thread ID: 5.4

This is a test to see if I have access to the system.

New: What would the role of the LSS Administrator (LSSA) be under a distributed system?
From: Dennis Bechtel DAX@Co.Clark.NV.US
Date: 2/12/97 11:18 PST
Thread ID: 5:5

This is to replace my earlier, cryptic test message. I apologize for my late arrival into the LSS discussion (Is anyone still out there?). I have, however, been one of the "lurkers" out there and have followed the discussions with interest. I have been particularly interested in the discussion about whether there is need for a LSSA under a "distributed" system. I agree with both Brad and Moe that there will always be need for a central contact or "administrator" to manage or coordinate the many issues that will arise in the use of the LSS. As we proceed towards licensing (if that indeed ever happens), I see the need for an LSSA to become more critical as more parties begin to participate, probably as a result of litigation support needs. The public in particular, should they become more involved, will need guidance regarding the use of the system. That could be a full time job in and of itself. While I'm basically a trusting person, I'm also not comfortable in assuming that all participants will be "policing" their own efforts on the system. I know that as a member of an "affected government" whose citizens may have to live with a repository, an LSSA will give me a warm and fuzzy that a LSS will be useful when needed. Also, as those of us who remember the original discussion and issues go away to the home, it will be important to maintain some continuity on the LSS (and its nuances).

As a final note, and to totally change the subject, is there a role that the LSSARP could play in deliberating issues associated with licensing that may arise should interim storage legislation be approved? Ciao

Supplement: What would the role of the LSS Administrator (LSSA) be under a distributed system?
From: Bill Olmstead wjo@nrc.gov
Date: 2/13/97 10:25 PST
Thread ID: 5:5.1

I think you raise several excellent points about the LSS Administrator under a distributed system. I would like to suggest we discuss them in the following way:

1. Should there be an LSS Administrator in addition to the presiding officer (i.e. the pre-application licensing board, the settlement judge, or the Atomic Safety and Licensing Board after docketing?

I think it may be unnecessary to have a technical person who is the LLS Administrator because the technology is becoming more seamless, digital signatures are becoming reliable, the NRC is moving closer to having an electronic docket for all proceedings, and all parties will be able to deliver products electronically much easier that was envisioned on the time the LSS Administrator was conceived.

2. Will the absence of an LSSA mean that the parties are policing their own efforts?

I don't think this is a necessary conclusion. If we think of the proceeding in light of the NRC's adjudicatory docket as it will exist in 2000 rather than as it existed in 1972, then we must assume that NRC has an electronic docket. Thus, all materials in the docket will be placed there in accordance with NRC requirements for the docket. The materials not subject to this requirement will be those items subject to traditional discovery in the possession of non-governmental parties. Many of these will also be available in electronic form. The question is whether there is a substantial volume of material that will ultimately be produced for inclusion in the docket that are not produced electronically?

3. Is there a role for the LSSARP if interim storage legislation is approved?

The group would have to be rechartered and a precise statement of its mission would have to be developed. Our ability to do that will depend upon what is ultimately in the legislation. After the big pow wow among Congressional leadership and the President's team this week, the papers are reporting that it is back to the drawing board. Thus, I would think we would want to leave this issue for discussion if and when there is something more concrete.

[Public] New: LSS Administrator
From: Abe van Luik abe_vanluik@notes.ymp.gov
Date: 11/26/96 15:52 PST
Thread ID: 5:2

Just looking at the discussion on this topic, and having had some experience with online services and the Internet, it is my opinion that unless you have an administrative structure, with a head, you will run into currently unanticipated problems without the ability to respond effectively and quickly. Someone has to own and maintain it, in other words.
--abe--

[Public] Agree: LSS Administrator
From: Bill Olmstead wjo@nrc.gov
Date: 12/9/96 7:08 PST
Thread ID: 5:2.1

I agree with your observation. The question that I want to focus attention on is whether this is best performed by each provider (Participant) subject to the supervision of the Licensing Board in the event of disputes among and between the participants or whether all participants web sites should be subject to a single technical "LSS Administrator"

who defines the rules/standards/etc. The LSS Administrator was a practical necessity when the LSS was envisioned as a large mainframe centrally located computer to which dial in access was provided. The distributed nature of the internet makes other models not only more practical but more desirable.

LSSNET Caucus Area 6: How should advice from potential users of the LSS be provided for?

New: advice from potential users
From: Chip Cameron fxc@nrc.gov
Date: 1/3/97 13:45 PST
Thread ID: 6:2

It seems like much of the material posted in Caucus area 5 on "participation" is also relevant here. The issue of how best to obtain advice from potential users is dependent on what ultimately comes out of the larger exercize on the fate of the LSS. If all we end up doing is incorporating the distributed system concept into the rule, then I don't see any reason not to maintain the LSSARP as the vehicle for obtaining advice (the "mix" between virtual and face-to-face discussions will remain an issue, however). However, if we go to a more informal document access system and fall back on Subpart G, will we still need to maintain a formal advisory panel? Should the panel be reconstituted to address the larger issues of the use of electronic technology in NRC proceedings generally?

LSSNET Caucus Area 7: Can DOE file an electronic application in hypertext?

New: How can we generate more participation?
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 12/9/96 15:34 PST
Thread ID: 7:1

Brad voiced a concern that I, too, have been wrestling with. This does not seem to be a true forum for all the LSSARP participants. I don't know whether they are "lurking" and listening to the things that are being written, or perhaps are uncomfortable with the format. I know that I end up writing and erasing numerous messages before I actually post anything. Also, there may be some reluctance to commit comments or suggestions to virtual paper. Perhaps we need one more face-to-face LSSARP to scope out the reactions to this medium. Bill mentioned that stats show some viewing by LSSARP types. What percentage of members have actually logged on? [Ed: See Topic 5 for a continuation of this thread]

To Bill's other point, In looking around the Net, I find that the state of Nevada has a listing of all its published documents (thanks, it looks good!) and DOE has RISWeb up, so there is a listing of all our documents, SWRI has a listing as well, so that covers part of the NRC holdings. I guess the point is, the LSS participants are providing access to documents now, without an LSS. Do we need the prescriptiveness of a regulation? Is there something mandated in subpart J that is not being or would not be done if we just used subpart G? If we use G, can I file the LA in hypertext?

Answer: How can we generate more participation?

From: Bill Olmstead wjo@nrc.gov
Date: 12/11/96 11:02 PST
Thread ID: 7:1.1

Remember that the penalty provided when the LSS Administrator fails to certify is to proceed under Subpart G. It is our intent to revise Subpart G to recognize electronic filings. At that time you should be able to file the LA in the way that you visualize subject to whatever digital signature standards that may be prescribed. I think that we should focus on the things that are in Subpart J that participants want to preserve if the proceeding is conducted under an electronically friendly Subpart G. My current think is that those things might be most easily accommodated by changing the procedural requirements for applications to construct a repository in Subpart A.

New: A Hypertext Application
From: Bill Olmstead wjo@nrc.gov
Date: 12/20/96 5:36 PST
Thread ID: 7:2

I asked the LSSNET Administrator to start this topic because Claudia suggested an approach that I think has a lot of merit. (See the first thread in this topic and my response.) The Comptroller General has just issued an opinion endorsing digital signatures (using the NIST standards but I suspect the commercial standards can be certified by NIST since their organic statute now provides that all agencies are to adopt industry codes and standards whenever possible.) Given this development, I see no reason not to use web technology to enhance the electronic application by using hypertext to link to related information.

There are a number of issues that merit input from participants such as: 1) Where does the application begin and end? 2) What statements in the application are certified by DOE and what ones are not? 3) Should links be provided to only DOE documents on government servers or should they be provided to any source on the internet that DOE considered? (4) If the latter, what happens when the site linked to is down, discontinued, or moved? (5) Are there special considerations for copyrighted material? (6) How should amendments and updates be handled?

I am sure that participants can think of other issues as well. Nevertheless, it would be useful to begin to gather input and thoughts.

LSSNet Phase II Postings
03/01/97 - 03/31/97

The concept of LSSNet is that participants proceed through a three-phase process from a general discussion of the LSS rulemaking issues in Phase I to the consideration of draft rulemaking text in Phase III.

Phase I may be viewed but is no longer active. Phase II is now in progress and will continue through March 31, 1997.

Based on the participant commentary, the NRC staff has proposed below some specific alternatives for addressing the major issues of concern in the development of the LSS:

Topic 1 - Should the requirement for an LSS be eliminated?

Topic 2 - Should the requirement for an LSS be retained based on a distributed system?

Topic 3 - Should DOE have the option to submit an electronic license application with hypertext links to relevant documents?

In Phase II, we ask for participant comment on these alternatives, including responses to specific questions identified for each alternative. Although we believe that these alternatives are the major considerations, participants should not hesitate to suggest additional alternatives or combinations of alternatives for consideration by the NRC and other participants.

LSSNET Phase II Caucus Area 1: Should the requirement for an LSS be eliminated?

New: Legitimacy of Assumptions
From: Dan Graser djg2@nrc.gov
Date: 3/5/97 9:57 PST
Thread ID: 1:1

The preamble notes that the original objective of the LSS [was] to assist the Commission in making a quick decision on licensing the repository." That is more along the lines of a mission statement. There were many objectives needed to support that mission including 1) provision of a shared discovery environment 2) provision of easy and equal access to potential parties and affected parties 3) preservation of institutional memory 4) the elimination of redundancy of costs in operations by the many potential parties 5) and providing an electronic docket within the LSS environment that can be consistently tracked back to the presence of items in the evidentiary document component of the LSS.

Using a distributed environment that is implemented in an internet environment does not ensure that the overall mission is accomplished.

The preamble also notes that it is "easy for litigants to make their individual document collections easily accessible through the internet." A litigation support capability counts accessibility as only one of its attributes and perhaps not even the major one. Accessible does not equate to useful for preparing for extensive litigation and trial support. What is acceptably "accessible" to the internet misses the point: trial support requires more than browsability and an occasional download. Trial preparation means having an environment where discovery searching can be conducted in a very sophisticated way, where large subsets (records and

perhaps even entire files) can be digested, organized, researched, sorted and packaged for legal professionals' usage.

I think that the assumptions are not wrong that a central mainframe can be done away with, but I think that the ramifications on the rest of the "objectives" and how they will be accomplished, and at what cost, and to which parties, all needs to be addressed as a coherent whole.

Qualify: Legitimacy of Assumptions
From: Bill Olmstead wjo@nrc.gov
Date: 3/7/97 8:43 PST
Thread ID: 1:1.1

I agree with your statement of what motivated the orginial decisions to establish the LSS. I don't think that most of those observations will hold up under current assumptions. First, I believe most litigators will want to use state of the art "off the shelf" hardware and software for their presentations during the hearing. Working with the familiar is always better than trying to work with someone else's product. Second, the assumptions about time for hearing based on late 1970s status of Administrative Procedure Act Adjudication should no longer be thought of as "baseline." A number of recent cases have supported broader discretion in presiding officers to control the length of the proceeding by using innovative techniques no originally envisioned. Third, the amount of elapsed time (from 1993 to 2003+) makes achievement of LSS certification as originally envisioned most difficult to contemplate. Thus, if we must pare back on assumptions, the question is how to focus on those that will be most important to most of the likely parties. Given that the fastest growing segment of the automated market is intranet (not really internet), it seems prudent to assume most parties will be moving in a direction to use electronic products within their own "four walls." The questions posed in Phase II are designed to ask how we can best address this reality in the context of the LSS database design. I think there is a lot that we can do that will be helpful to everyone concerned and that it can be compatible with the electronic docket work that Tony Cotter and John Hoyle have working into Phase 1 of NRC's ADAMS project. Presumably, our ultimate "plug and play" courtroom will also be able to use those products. Thus, the question raised is whether we can be more productive by focusing on several small steps to build up the electronic systems to support LSS rather than continuing to focus on centralized solutions that may not be necessary in this environment.

New: Relevancy and the Topical Guidelines
From: Dan Graser djg2@nrc.gov
Date: 3/5/97 10:24 PST
Thread ID: 1:2

In information management space, which includes information management technologies, retrieval, and screening documents into a data store, etc., the Topical Guidelines have little at all to do with relevancy. What they accomplish is to place parameters around concepts, issues, topics, etc., by defining the areas that are covered in the licensing. In a broad scope way, they define what are the relevant issues, but they do not help move us toward resolving what documents within that topical area are relevant in the legal sense. This is where the difficulty has always been encountered in trying to keep document counts down. I think the concept that needs to be nailed down is not relevance but rather which documents are

germane to support the license application. Identifying what is needed to support the application and what is needed by other parties in support of their issues is the definition that will drive the content and volume of the database holdings.

Supplement: Relevancy and the Topical Guidelines
From: Bill Olmstead wjo@nrc.gov
Date: 3/7/97 8:59 PST
Thread ID: 1:2.1

I agree with your observation, particularly about document counts. This is why I am enthusiastic about Claudia's proposal to go to a hyper-linked application where key reference documents are immediately accessible by provision relied upon. It is quite conceivable under this scheme that multiple versions of a document may be referenced for different purposes for conclusions reached at different times. Nevertheless, this would be immediately evident in dynamic space thus reducing duplication of the document database (and presumably and lot of counts) as well as keeping the overall size of the database in control.

Agree: Relevancy and the Topical Guidelines
From: Chip Cameron fxc@nrc.gov
Date: 3/10/97 5:57 PST
Thread ID: 1:2.1.1

The original "relevancy" criterion was inextricably tied up with the issue of assuring potential parties to the HLW proceeding that if they "gave up" their traditional document discovery rights for the period after the license application was submitted, the new electronic system would provide them with essentially the same access as they would have had under the traditional rule (which uses a broad "relevancy" standard). With this assurance, the potential parties would agree to voluntarily comply with the LSS rule in the pre-license application phase in order so that the system could be "built". If we move to a regime where the traditional document discovery rights are still available (and would in fact be "facilitated" through the existence of electronic document collections), then we should turn our attention to the key documents rather than trying to ensure access to any document that might fall within the broad category of "relevant".

New: Ongoing mechanism
From: Dan Graser djg2@nrc.gov
Date: 3/11/97 8:40 PST
Thread ID: 1:3

The preamble asks that we consider the continuing need for some type of coordinating mechanism for the informal system ...and also asks how and to whom potential users would provide commentary on issues such as the availability of documents and the adequacy of individual websites.

I think this needs to be definitely planned for insofar as the federal government relies on annual funding. This means that if there are identified items that require remediation, then if it is one of the fed websites, it may be two whole budget cycles before funding for the identified remediation can be earmarked. This directly drives the speed of response to concerns, whether the revision is done voluntarily or per the direction of the LSSA or the licensing board.

Another observation: the lag time in the budgetary process is a force for ensuring that things be planned in advance and that they be done right the first time. If doing the individual sites right the first time has a legitimate priority, then I think it moves us in the direction of having some organized approach at least until such time as the thing is properly launched and coordinated.

Not that I am endorsing the voluntary process, but if we were going to follow that philosophy it should probably apply in the post implementation phases.

New: Comments on Phase 2 Licensing Support System
From: Dennis Bechtel DAX@Co.Clark.NV.US
Date: 3/31/97 13:05 PST
Thread ID: 1:4

Regarding the discussion about the assumptions behind the creation of the LSS, I think that Dan Graser (Thread 1) accurately reiterated a number of the objectives of the original negotiated rulemaking on 10 CFR Subpart J. In considering the recasting of the Rule in Phase 3, these objectives must be retained, or the rulemaking will be as contentious as the 1988 negotiated rulemaking for Subpart J.

The preamble correctly notes that a number of activities that have not happened since 1988. This does not in and of itself, however, negate the need for the creation of a LSS (or a LSS-type system). The time frame for repository characterization and decision-making, it should be pointed out, has not lengthened. DOE has not deviated from its schedule on submitting a license application, or in opening a repository in 2010. To further complicate the situation, DOE is also proposing to modify the current 10 CFR 960 site suitability standards from a standard where the suitability or unsuitability of various physical characteristics of the site are determined, to one based on exposure limits to a population or critical group residing near the repository (depending on the final EPA standard). If the proposed standards are enacted, therefore, there would appear to be a greater uncertainty as to how DOE came to their conclusions, and a greater need for a more organized process to ensure that data and information is available to assess suitability. Since the NRC will be required to promulgate regulations in conformance with this standard, the retention of the LSS would appear to be warranted.

A more laissez faire approach would add to the uncertainty of Clark County, the other affected units of local government, the State of Nevada, and the public on the basis suitability decisions will be made. Clark County, therefore, recommends that the requirement for a LSS not be eliminated.

Topic 1 also questions whether there is further need for a LSS Administrator (LSSA). As we noted in our Phase I comments, Clark County believes that it is important to retain the LSSA position in the Nuclear Regulatory Commission, with sufficient support staff to effectively carry out the responsibilities. The function of an Administrator is even more important if a more open system is implemented (e.g., based say on retrieving documents via the Internet). The LSSA's responsibilities could include ensuring that all parties are adhering to the provisions of the Rule (an auditing function), that the test of relevancy is being met, and that the System is meeting the needs of all participants. This is especially critical for the local governments and public. The LSSA could periodically convene and chair users' groups meetings (LSSARP) to determine

problems with the process, etc. At a minimum, the amount of data and the sensitivity of the topic warrant the use of a coordinator.

Relevancy is in the eye of the beholder. Since a considerable amount of discussion and effort was undertaken in the development of the Topical Guidelines, these serve as a guide for relevancy. As such, we would recommend retention of the Topical Guidelines. From the perspective of Clark County, and probably other affected governments, it is our concern that issues associated with preclosure standards under the current 10 CFR 960, socioeconomic, environment, and transportation, will be discarded depending on which party is defining relevancy. The inclusion of these topics in Subpart J was debated extensively.

With regard to the question on whether relevancy could be simplified by identifying a set of basic documents, etc. there are a number of questions. Who would decide which basic documents were relevant? With regard to documents that could be eliminated, while discarding documents prior to a certain time period would not appear to be a valid test, perhaps, discarding documents or data that did not meet some criteria (e.g., NRC/DOE quality control standards) may be one way to reduce the quantity of information to be incorporated in a LSS.

LSSNET Phase II Caucus Area 2: Should the requirement for an LSS be retained based on a distributed system?

New: Comments on Phase 2 Licensing Support System
From: Dennis Bechtel DAX@Co.Clark.NV.US
Date: 3/31/97 13:21 PST
Thread ID: 2:1

A distributed system (i.e., Internet?) could be used, employing the basic requirements of the Rule plus the retention of a LSSA. It would be important to either provide financial assistance to some parties (e.g., some affected units of local government), or enable the public to access information to assist in understanding or questioning the basis on which suitability decisions are being made.

LSSNET Phase II Caucus Area 3: Should DOE have the option to submit an electronic license application with hypertext links to relevant documents?

New: Things to think about
From: Bill Olmstead wjo@nrc.gov
Date: 3/3/97 7:06 PST
Thread ID: 3:1

NRC will soon be implementing an "electronic docket" for its adjudicatory proceedings that will provide the public and parties ways to properly authenticate, date, and sign documents being placed on the docket. As useful as that is, there are additional useful things that can be added to documents by most standard word processing systems such as Word Perfect, Microsoft Word, Lotus Word (AMI Pro). In addition there are many new products on the market that are deliberately designed to create three-dimensional documents in HTML (Hyper text markup language.) These products allow one to go beyond traditional footnotes and references by the

creation of "links" that load into the viewer's computer the exact material (source document) relied upon by the author. These links can be added automatically with bookmarks and references as the document is created. Once the first author is finished, the document and its links may be forwarded on for other reviews and comments. At this point, it can be treated as an entirely separate document or it the original can be further enhanced. The "collaboration" between the first author and the reviewer can be documented. Other source material can be linked and cross-linked with the first source material. These are powerful tools that are easily learned and can provide a high quality product. They obviously raise a number of questions about how we traditionally handle such information and assumptions about such information. I think it is worth some serious time of advisory committee members to think about how an application document might most effectively use these tools to highlight the significant technical material and opinions related to the Yucca Mountain HLW Repository Application.

Supplement: Things to think about
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 3/4/97 8:44 PST
Thread ID: 3:1.1

DOE has begun a prototype effort to look at ways to effectively construct an electronic license application. This is not a test of the technology,but rather a test of the process. The test will focus on the process for putting things into a hypertext environment, establishing linking rules and internal review processes. Prototyping of a Web-based Information System (WBIS) will be done in two phases.

The first step will be to place an existing document into a Web environment and make the appropriate links from the document to references in the Records Information System and link cross references within the document. The document will be one already reviewed by the NRC for technical content (probably a Seismic Topical Report). A Web version will be provided to NRC so they can review the document not for technical content, but to get an idea for the advantages and disadvantages of having a document in this format. The first phase should be complete in April.

The second phase will be to actually develop a document in the hypertext language. This phase will test a number of different concerns. DOE will be dealing with multiple authors at remote locations using different hardware/software configurations. Consequently, this phase of the test will examine not only what has to be linked, but when the linking should be done, how the document should be reviewed, requirements for access and configuration control, and printing of the document. This phase should be complete in June. At that point, DOE will decide whether or not to continue with the application and what documents should be placed in HTML format.

Question: Things to think about
From: Bill Olmstead wjo@nrc.gov
Date: 3/7/97 8:36 PST
Thread ID: 3:1.1.1

I would like to clarify how DOE proposes the phases. Is the idea to work only at Yucca Mountain at first. Then Yucca Mountain and some other remote DOE locations but DOE personnel and contractors only. Finally, the NRC staff would be involved in using the material but it is unclear what they

would author as opposed to review only. Or is the idea to involve LSSARP participants in authoring and reviewing as well so that different links to different distributed databases cold be used? I am not trying to push the collaborative part of the technology, just trying to clarify organizationally how DOE currently wants to proceed.

Answer: Things to think about
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 3/7/97 14:33 PST
Thread ID: 3:1.1.1.1

The first phase will involve DOE taking one of its own documents (that the NRC has already reviewed and provided technical comments on) and putting in hypertext links to references and supporting information.

That will be done by DOE's M&O contractor at the Las Vegas office. The hypertexted version of the document will be evaluated by the DOE and M&O to determine things like: who should do the linking (the author or a support person), what kind of links are most useful, how long does it take, is it helpful to the reviewer of the document. The NRC and LSSARP members are invited to review the hypertext document and comment on whether or not this sort of format facilitates the review of technical documents.

I am not sure how you envision a collaborative authorship of a document or linking to distributed databases. The document for the first part of the prototype is already written, its merely being placed in another format. The linkages will be to records in our own system or to header information about documents authored by other parties. I think that if NRC decides to use a distributed database system in lieu of the LSS, that the DOE will probably include documents that are referenced in its arguments, or pointers to readily available references, in its own database. That way, the linkages will be to the version of the document that DOE used.

Supplement: Things to think about
From: Chip Cameron fxc@nrc.gov
Date: 3/10/97 6:20 PST
Thread ID: 3:1.1.1.1.1

The issues that Bill raised would seem to be fertile ground on which to seek input from the Advisory Committee members. The many "technical" issues that need to be resolved (format, etc.) might lend itself to the subcommittee process that the Panel used to address such issues as header fields.

Particularly if we assume that the option in Cauacus area 1 is eventually adopted, the primary focus of the Advisory Panel (or newly formed users group?) could be on the electronic application issue. Does Claudia see this type of input as being helpful, and what type of time frame are we talking about?

Question: Things to think about
From: Bill Olmstead wjo@nrc.gov
Date: 3/11/97 5:29 PST
Thread ID: 3:1.1.1.1.2

You say, "I am not sure how you envision a collaborative authorship of a document or linking to distributed databases."

I was assuming that the DOE application would have multiple "authors" either by organization or individual. In arriving at positions there are different levels of formality that one might consider: 1)individual differing opinions; 2)level of review (field, contractor, peer, branch, division, office); 3)level of decisionmaking. In the traditional LSS parlance many of these concepts are captured in the definition of "circulated draft" [10 CFR Part 2 Appendix J] With a dynamic, hyper-linked electronic application document, it would seem to me that we ought to consider how to annotate (hypertext links for example) the information that would otherwise need to be gleaned from reviewing a number of circulated drafts. If this is done effectively, the late discovery of a "circulated draft" would not seem to have much relevance to an adjudicatory issue since the critical information would have already appeared in the application with a disposition link. For example, "hyperlink 223 - Annotation - In 1994, the National Academy of Sciences suggested handling this issue by eliminating the mean plus one standard deviation. Subsequent tunnel boring work revealed that this suggestion was not necessary because the data was bounded as described. REF link -Academy study."

Let me hasten to add, that I am only trying to think through how deep one might want to embed links in a single document. I am not at this point proposing anything.

New: NARA and IAEA
From: Dan Graser djg2@nrc.gov
Date: 3/13/97 4:46 PST
Thread ID: 3:2

1) In the electronic license application environment, how will DOE (and NRC) submit their record materials to NARA? Transferring documentation on electronic media to NARA is not the same as transferring virtual electronic documents or a complete license application and providing a sustainable retrievability for NARA permanent records over extended periods of time.

2) How will NRC submit its docket files (and what exactly is "in" our docket files?) to NARA?

3) How will the U. S. Government submit the complete set of documentation on the HLW repository to IAEA in duplicate? It seems to me that we would have to freeze every site that is part of the LSS internet environment and then replicate the environments. If everything is reduced to paper to facilitate the transfer, the hyperlink cross- references are lost (at worst) or exceedingly cumbersome to use since there is no cross reference to related documents by accession number.

4) Has anyone been following international efforts in developing the Convention on the Safety of Radioactive Waste Management? It is my understanding that it includes the topic of documentation for repositories. The sixth session of the open-ended Group of Legal and Technical Experts preparing the draft of the convention on the safety of radioactive waste management was held at the IAEA in early January. They note that progress was made in important areas and the Group plans to hold its final meeting in March, with submission of the draft Convention to the IAEA Board of Governors for consideration and approval in June, with a view to the document's adoption at a Diplomatic Conference later this year.

Disagree: NARA and IAEA

From: Bill Olmstead wjo@nrc.gov
Date: 3/14/97 12:19 PST
Thread ID: 3:2.1

Bill Reamer of my staff is working on the convention in Vienna this week and currently it is not sufficiently specific to address the issue you are raising.

With respect to the rules of the National Archive and Records Administration (NARA), I don't think we need to over define what constitutes the federal "record". For example, paper applications contain a multiplicity of footnotes but no one thinks each footnote has to be captured as a "record". Consequently, I see no reason to capture each link in a hypertext application either as a separate "record" or as a part of the application "record". As the proposal develops, we can be sensitive to this issue and reconsider whether there are different demarcations to make.

Disagree: NARA and IAEA
From: Dan Graser djg2@nrc.gov
Date: 3/17/97 7:57 PST
Thread ID: 3:2.1.2

Bill, I believe that downstream disposition needs to be evaluated and that the best person to speak on the subject of meeting NRC's requirements to NARA is Brenda Shelton. After Brenda looks at it, then perhaps we can say it is a no-never-mind; on the other hand, she (and NARA) may just say that NRCS 2-19.2 means what it says when it says that the license application and all other related documentation are permanent records that retire to WNRC and are then offered to NARA.

And, in response to your observation that nobody is going to go back and look at every footnote and reference, I was at DOE/OCRWM when the NRC did, indeed, scrutinize every footnote and reference in the SCP-CD and I vividly recall the DOE management response that caused us IRM types to hunt down every reference and provide them (or our findings as to why they could not be found) to NRC. So, I am not so sure that even if OGC would not pursue such scrutiny, that the same could be said of the NMSS technical staff.

I really feel that these should be scrutinized by the domain experts so that we know what the technical staff are comfortable with.

Answer: NARA and IAEA
From: Bill Olmstead wjo@nrc.gov
Date: 3/18/97 4:34 PST
Thread ID: 3:2.1.2.1

I think I was misunderstood about footnote references. I agree that they may need to be produced in the discovery sense. This does not make them agency records, however, for purposes of NARA and never has unless a federal agency (in most adjudication the NRC) chooses to place them on a disposition schedule. Many times, however, the staff reviews them, decides they have no relevance, and discards.

Qualify: NARA and IAEA
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 3/17/97 10:27 PST
Thread ID: 3:2.1.3

Our prototype activities are expected to answer some of your

questions. The first part of the prototyping assumes that if a document is complete and all the reviews are finished before putting in the hyperlinks, nothing in the existing processes will really have changed. The review process captures all comments, there are no "circulated drafts" that are not already part of a records package for the review of the document.

The second part will investigate how the existing writing and review processes can be done electronically and captured as part of the review record. Hyperlinks within DOE documents (e.g. "Crowe, 1995a") will be to the bibliography and from the bibliography to the header information in RISWeb. The headers then give either a) the record or b) information about a "readily available reference". That way there is a clear distinction between the document itself and the supporting information. Also, the hyperlinks do not become critical to the document. The record copy of the document is the hardcopy version without the links. I view the hyperlinks merely as an aid to reviewing (albeit a powerful one). The document must be able to stand by itself. The prototyping work now in progress will evaluate whether or not this is achievable.

You and Dan are both right, the footnote itself is not a record, but the supporting information that the footnote refers to (or is taken from) must be accessible to the reviewer as either a record or a readily available reference.

Agree: NARA and IAEA
From: Bill Olmstead wjo@nrc.gov
Date: 3/18/97 4:39 PST
Thread ID: 3:2.1.3.1

This seems like a reasonable approach to me. I would hope some of the other LSSARP participants would comment on it.

New: Comments on Phase 2 Licensing Support System
From: Dennis Bechtel DAX@Co.Clark.NV.US
Date: 3/31/97 13:25 PST
Thread ID: 3:3

The idea of hypertext would be a good way to access any document in a LSS, not only those that would be prioritized. From Bill Olmstead's discussion it appears that the technology is readily available to do this. I would agree with his suggestion that this be a topic of a future LSSARP meeting/conference call.

The NARA and IAEA discussion may be worthy of discussion at a future LSSARP meeting as well, if only to discuss the significance of the issue to LSSARP members (is there any background information that could be transmitted to the group?)

I didn't receive any comments from any other affected parties. If you have any questions on my comments please contact me. Thanks for keeping the concept of a LSS going.

LSSNet Phase III Postings
04/15/96 - 06/30/97

LSSNet Phase III

The concept of LSSNet is to proceed through a three-phase process from a general discussion of the LSS rulemaking issues in Phase I to the consideration of draft rulemaking text in Phase III. Phase I and Phase II may be viewed but are no longer active. LSSNet Phase III is now in progress and will remain active until June 30, 1997.

Based on the participant commentary during Phase I, the NRC staff proposed some specific alternatives in Phase II of LSSNet for addressing the major issues of concern in the development of the LSS. Most of the comments submitted during Phase II addressed the option set forth in Topic I of Phase II that would eliminate the requirement for an LSS. A major concern of one participant was that there is still a need, best served by the requirement for an LSS, for an organized process to ensure that the data and information necessary to evaluate site suitability is readily available. This participant also stated that nothing has occurred since the LSS rule was promulgated to change the basic assumptions that were the basis for the LSS requirements. The participant also supported retention of the Topical Guidelines as a basis for determining the "relevancy" of documents, and also retention of the relevancy standard for determining what documents must be included in the LSS. Another participant expressed concerns over whether simple access to a voluntary, distributed system of individual websites would provide the type of sophisticated litigation support discovery system necessary to prepare for the high-level repository adjudicatory proceeding. This participant also emphasized the need for careful planning and coordination among the potential parties through an advisory panel mechanism, to ensure that the websites are developed carefully from the very beginning of the process. No other comments were received on the potential disadvantages of pursuing a rulemaking based on Option 1.

Based on a consideration of the commentary on the Phase II Topics, the NRC staff has developed a draft proposed rule for participant discussion. The draft proposed rule is based on the eliminating the current requirement in 10 CFR Part 2, Subpart J for a centralized "Licensing Support System" administered by the NRC, with a requirement for participants to share their documentary material with other participants by providing electronic access to documents. The document submission requirements in Subpart J would be replaced by a requirement that potential parties to the repository licensing proceeding, including DOE and NRC, provide access to other potential parties to the electronic version of their documentary material. "Documentary material" has been defined as "any material or other information that a party or potential party plans to produce either during discovery by subpoena or deposition during the licensing of a candidate site for a geologic repository". The scope of "documentary material" would still be guided by the Topical Guidelines. The existing requirement of certification by NRC that DOE had complied with these requirements six months before the license application is submitted would also be retained. The requirements for an electronic hearing docket would also be retained, as well as the Pre-License Application Presiding Officer to rule on requests for access to the individual websites. An Advisory Review Panel is required for providing advice on electronic docket issues, but the requirement for an LSS Administrator would be eliminated.

We ask participants to address the following topics relevant to the draft proposed rulemaking text:

Topic 1 - Participant views on the acceptability of the conceptual approach outlined in the draft proposed rule

Topic 2 - Participant views on the specific provisions in the rulemaking text, for example, on the definition of "documentary material"

Topic 3 - Participant views on major issues that still need to be addressed in either the rulemaking text or the Statement of Considerations for the proposed rule

Although we believe that these topics are the major considerations, participants

should not hesitate to suggest additional or alternative topics for consideration by the NRC and other participants.

LSSNET Phase III Caucus Area 1: Participant views on the acceptability of the conceptual approach outlined in the draft proposed rule

New Topic: Concept is good
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 5/22/97 8:31 PST
Thread ID: 1:1

I like the concept of the electronic docket. Everyone here at YMP is very positive about it and think that it will be more efficient and effective.

I do have some specific questions on the language that I'll post in the other topic area. I am a little confused about section 2.1008, where a person must petition for access to pre-licensing information. Does that imply some sort of password protection or intranet solution for the information that would be posted to the ED?

My other general sort of comment is that you took out sections 2.1002(c) and d, and I think they maybe should go back in, unless they are adequately covered in other subparts of 10 CFR 2.

Answer: Concept is good
From: Bill Olmstead wjo@nrc.gov
Date: 6/9/97 5:28 PST
Thread ID: 1:1.1

The entirety of Section 2.1002 was deleted because it essentially was a definition of an electronic information management system that was centrally maintained. Paragraphs (c) and (d) indicated that the state and other parties who put their documents in the central system did not give up any rights as a result of having the government maintain their documents. Under the proposed Internet solution where each party maintains their own documents on their own servers, there is not a need for paragraphs (c) and (d) because the parties are in a position to protect any privileges they might wish to assert.

New: Phase III Caucus Area 1
From: Steve Frishman ssteve@govmail.state.nv.us
Date: 6/27/97 15:24 PST
Thread ID: 1:2

Concept is good.

New: New Subpart J
From: Mal Murphy Mal.Murphy@aol.com
Date: 6/30/97 11:23 PST
Thread ID: 1:3

Although, because of a lack of oversight funding for Nye County, I haven't been able to study the new rule carefully, I agree with the general approach.

New: Proposed Concept
From: Dennis Bechtel DAX@Co.Clark.NV.US
Date: 6/30/97 11:43 PST
Thread ID: 1:4

I am supportive of the "electronic docket" concept. I had the

opportunity to participate in a demo of the proposed "Web-based Information System (WBIS)" at DOE's Nevada Hillshire building several weeks ago. As presented the WBIS can be an extremely useful tool. There still needs to be some consideration given, however, to how members of the public (and some resource-poor Nevada governments) without access to the Internet can participate.

LSSNET Phase III Caucus Area 2: Participant views on the specific provisions in the rulemaking text, for example, on the definition of "documentary material"

New: Specific comments on the proposed draft rule
From: Claudia Newbury Claudia_Newbury@Notes.YMP.gov
Date: 5/27/97 11:58 PST
Thread ID: 2:1

First round of comments from me on proposed draft revision to 10 CFR 2 SUBPART J:

1.0001 - Definitions - include a definition of "readily available references" as agreed to by the LSSARP. I think this is a critical item if we are going to be moving to a Web environment. It impacts copyrights and processing of reference materials. (see my comment at 2.1003)

2.1002 - eliminated words about the State of Nevada's participation during pre-licensing. Should the State want to retain those words, DOE would have no objection.

2.1003(a)(1) - The provision 2.1003(a)(2) that requires any information acquired before the Commission opens discovery to be available as an electronic file has been struck. Something requiring the earlier material to be available should be added to the proposed revision.

2.1003(c)(1) - There will always be some material that will not be available electronic form. Header information for documentary material such as "raw data, computer runs, computer programs and codes ..." should be available in the electronic docket, but the actual information probably should be retained by the owner and made available on request (they may require compilers, translators, etc to be useful or even readable).

2.1003 - Please add a section in this part that allows the citation of "readily available references" without putting them in the docket. Since this will be available online, the issues of copyrighted materials must be addressed. Clearances for copyrighted materials often do not allow for posting to a Web site. DOE would prefer to avoid the issue altogether by simply pointing to where copyrighted materials can be readily obtained.

2.1004(d) - instead of the words "after its exclusion has been identified" can this say "after the document is requested"? This ties in with the issue of readily available references, above. If not, it should be clarified that this refers to documents "owned" by the party of whom they are requested.

2.1005 - Please add "readily available references" to the excluded materials. It now lists reference books and text books, but that is not broad enough to cover journal articles, proceedings, or other copyrighted materials.

2.1008 - this section implies that access to the electronic docket will be limited. Is the intent to provide passwords or accounts, or use an Intranet environment?

2.1011(f)(1) change "advice to" to "a forum for discussion of"

2.1011(f)(1)(i) strike "DOE on" Since DOE is no longer the developer of

a separate system

2.1011(f)(1)(ii) add "and advice to" at the beginning of the sentence.

New: Phase III Caucus Area 2
From: Steve Frishman ssteve@govmail.state.nv.us
Date: 6/27/97 15:29 PST
Thread ID: 2:2

Regarding Section 2.1013(d): "Online access to the electronic docket ...if authorized by a Presiding Officer, shall be provided..."

Unless I misundertand the meaning here, I do not believe it should be necessary for anyone to have to apply for authorization to access the electronic docket for purposes of viewing the contained material. Is there some reason that viewing access should be controlled?

New: New Subpart J
From: Mal Murphy Mal.Murphy@aol.com
Date: 6/30/97 11:26 PST
Thread ID: 2:4

The new definition of "documentary material" is unworkable, in my opinion. There does need to be some narrowing of the material to be placed in the system, but not to depart entirely from the current relavancy standard. How does DOE know now, for example, what they might have to produce in response to a subpoena which might be served on some DOE employee 5 years from now. By the same token, other participants can't plan, even though it is still tied to the topical guidelines, on what will be in the system. Bill Olmstead tells me this problem is recognized by the NRC staff, and the final language will look somewhat different. That's good. Hopefully, with the restoration of some oversight funding, I'll be able to spend some time thinking about this and can make a recommendation.

New:Caucus Area 2 Comments
From: Dennis Bechtel DAX@Co.Clark.NV.US
Date: 6/30/97 14:20 PST
Thread ID: 2:5

General Comment:

Although the proposed electronic access (or the NRC information system as noted in the Rule's definition) provides an excellent way to provide information for parties concerned about licensing issues, it does not preclude the need for an Administrator. The Administrator position could serve as an auditing function ensuring, for example, that information requirements outlined in the Topical guidelines are incorporated electronically, and available in a timely fashion for review by interested parties, that certain standards of data submittal are maintained and similar. Having an Administrator would also provide some assurance to outside parties (the public, Native American governments, and interested governments, in particular) that a system is in place to manage the considerable amount of information that will be critical for licensing.

2.1001?) Definitions

A. A definition should be added to define the term Topical Guidelines (referred to in the definition for Documentary Material)

B. As noted in the General Comments a definition should be retained for Administrator. As an example:

Administrator means the person and/or staff within the U.S. Nuclear Regulatory Commission (NRC) responsible for the management of the

electronic docket system (EDS). The Administrator's duties are defined
2.1011(d). The Administrator will report to the Advisory Review
Panel on EDS status.

2.1002 (High-level waste Licensing
Support System) should be added to describe the Electronic Hearing Docket/NRC Information System, (See definition of Electronic Hearing Docket) and to acknowledge that although the information is available through Internet access, it is, nonetheless, a system that is available and being managed for the review of DOE's license application for a nuclear waste repository.

2.1007 Access. It could be noted that NRC and DOE reading rooms would be made available for access by the public interested in licensing issues (this is noted, for example, in the existing Subpart J).

2.1011 Management of Electronic Information. Consistent with our recommendation that an Administrator be retained, parts of the Administrator's responsibilities should be included in the final rule (The words LSS and Licensing Support System of course, would be dropped). Paragraphs that should be retained are (d) 1, 6, 7, 8 (could be modified to " . . . ensuring documentary material is in the appropriate format"), 10, and 14.

LSSNET Phase III Caucus Area 3: Participant views on major issues that still need to be addressed in either the rulemaking text or the Statement of Considerations for the proposed rule

New: Phase III Caucus Area 3
From: Steve Frishman ssteve@govmail.state.nv.us
Date: 6/27/97 15:47 PST
Thread ID: 3:1

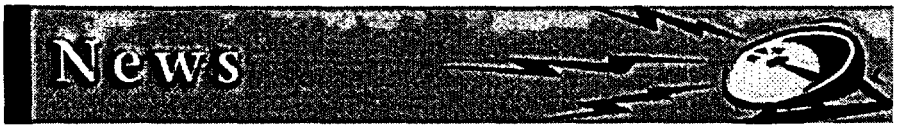
At this time I do not see that there are major issues missing, but I will continue to consider the question.

New: New Subpart J
From: Mal Murphy Mal.Murphy@aol.com
Date: 6/30/97 11:34 PST
Thread ID: 3:2

The definition of "party" should be amended to include Nye County, in recognition of its status as the situs jurisdiction under the NWPAA.

New: Caucus Area 3
From: Dennis Bechtel DAX@Co.Clark.NV.US
Date: 6/30/97 14:35 PST
Thread ID: 3:3

Clark County has no comments to Phase III, Caucus 3



LSSNet News - 10/16/97 at 8:29 (PST)

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To comment on this service: *comment@lssnet.llnl.gov*
Technical problems: *tech-info@lssnet.llnl.gov*

Last Update: September 17, 1996
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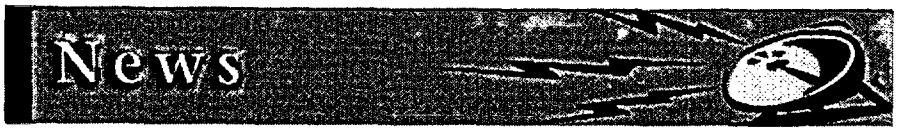


LSSNet Current News - 10/16/97 at 8:29 (PST)

Current Headlines | Archived News

COMMISSION PAPER ON LSS (10/01/97) -

The Nuclear Regulatory Commission has released a recent Commission Information Paper (SECY-97-154) on the Licensing Support System. Please consult the References area for a hypertext copy of this paper and related documents.

PHASE III OF LSSNET BEGINS (4/15/97) -

Phase III of LSSNet has begun. Discussions center on draft proposed rulemaking text and will continue through June 30, 1997.

Please check the electronic forum for further details.

PHASE II OF LSSNET BEGINS (2/25/97) -

A more focussed discussion of LSS rulemaking issues has begun and will continue through March 31, 1997.

Please check the electronic forum for more details.

WELCOME TO LSSNet (10/31/96) -

by
Arnold (Moe) Levin - LSS Administrator

On behalf of the Nuclear Regulatory Commission Senior Management Team for the High-Level Waste Geologic Repository Licensing Support System, I established the Licensing Support System Network (LSSNet) to provide an electronic forum for the discussion of issues related to the LSS. Although anyone can read messages in any forum, only registered members and/or representatives of the Panel can post messages.

Navigation within and use of the forum should be self-explanatory. After a few "clicks" around the forum, it should be obvious how it should be used. However, if you need help, please contact the forum manager.

The topics to be discussed include rethinking the use and implementation of the LSS based on modern technologies and the current state of the environment surrounding LSS activities. We started a number of topics and will include alternatives for dealing with LSS issues along with pros/cons for these alternatives. We invite forum participants to provide comments on any and all aspects of the topic -- new issues, modifications to old issues, alternatives for issue resolution, pros/cons for alternatives, etc.

The Senior Management Team will use your input to prepare a paper seeking Commission direction on the future of the LSS. A Commission decision is needed in time to influence the Department of Energy activities leading up to the implementation of the LSS.

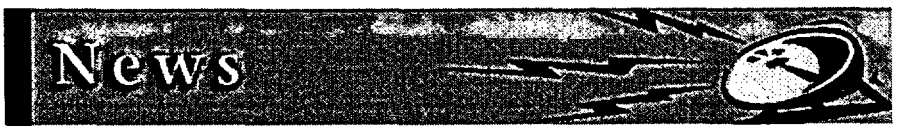
If you wish to contact me directly (outside of the forum), please feel free to do so.

LSSNET News Summaries

10/31/96 - The NRC has developed an interactive web site for use by Licensing Support System Advisory Review Panel (LSSARP) members. [more]

To comment on this service: *comment@lssnet.llnl.gov*
Technical problems: *tech-info@lssnet.llnl.gov*

Last Update: September 17, 1996
Disclaimer: UCRL-MI-116408



LSSNET News - 10/16/97 at 8:29 (PST)

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Compilation of LSSNet Phase III Dialog - 6/30/97

A compilation of all LSSNet Phase III dialog is available in the References.

Users may also view this dialog in Phase III of the LSSNet Forum.

June Postings - 6/30/97

- 06/30/97 Dennis Bechtel on Phase III Topic 1
- 06/30/97 Dennis Bechtel on Phase III Topic 2
- 06/30/97 Dennis Bechtel on Phase III Topic 3
- 06/30/97 Mal Murphy on Phase III Topic 1
- 06/30/97 Mal Murphy on Phase III Topic 2
- 06/30/97 Mal Murphy on Phase III Topic 3
- 06/27/97 Steve Frishman on Phase III Topic 1
- 06/27/97 Steve Frishman on Phase III Topic 2
- 06/27/97 Steve Frishman on Phase III Topic 3
- 06/09/97 Bill Olmstead on Phase III Topic 1

May Postings - 5/31/97

- 05/27/97 Claudia Newbury on Phase III Topic 2
- 05/22/97 Claudia Newbury on Phase III Topic 1

April Postings - 4/31/97

- No dialog submitted during this period

Compilation of LSSNet Phase II Dialog - 3/31/97

A compilation of all LSSNet Phase II dialog is available in the References.

Users may also view this dialog in Phase II of the LSSNet Forum.

March Postings - 3/31/97

- 03/31/97 Dennis Bechtel on Phase II Topic 1
- 03/31/97 Dennis Bechtel on Phase II Topic 2
- 03/31/97 Dennis Bechtel on Phase II Topic 3
- 03/18/97 Bill Olmstead on Phase II Topic 3
- 03/18/97 Bill Olmstead on Phase II Topic 3
- 03/17/97 Claudia Newbury on Phase II Topic 3
- 03/17/97 Dan Graser on Phase II Topic 3
- 03/14/97 Bill Olmstead on Phase II Topic 3
- 03/13/97 Dan Graser on Phase II Topic 3
- 03/11/97 Bill Olmstead on Phase II Topic 3
- 03/11/97 Dan Graser on Phase II Topic 1

- 03/11/97 Dan Graser on Phase II Topic 1
- 03/10/97 Chip Cameron on Phase II Topic 3
- 03/10/97 Chip Cameron on Phase II Topic 1
- 03/07/97 Claudia Newbury on Phase II Topic 3
- 03/07/97 Bill Olmstead on Phase II Topic 3
- 03/07/97 Bill Olmstead on Phase II Topic 1
- 03/07/97 Bill Olmstead on Phase II Topic 1
- 03/05/97 Dan Graser on Phase II Topic 1
- 03/05/97 Dan Graser on Phase II Topic 1
- 03/04/97 Claudia Newbury on Phase II Topic 3
- 03/03/97 Bill Olmstead on Phase II Topic 3

Compilation of LSSNet Phase I Dialog - 2/28/97

A compilation of all LSSNet Phase I dialog is available in the References.

Users may also view this dialog in Phase I of the LSSNet Forum.

February Postings - 2/28/97

- 02/13/97 Bill Olmstead on Topic 5
- 02/13/97 Bill Olmstead on [Public] Topic 2
- 02/12/97 Dennis Bechtel on Topic 5
- 02/12/97 Dennis Bechtel on Topic 5
- 02/10/97 Claudia Newbury on [Public] Topic 2
- 02/03/97 John Dossett on Topic 1

January Postings - 1/31/97

- 01/27/97 Moe Levin on Topic 1
- 01/13/97 John Greeves on Topic 4
- 01/10/97 Chip Cameron on Topic 1
- 01/10/97 Chip Cameron on Topic 1
- 01/10/97 Chip Cameron on Topic 3
- 01/09/97 Dan Graser on Topic 1
- 01/09/97 Dan Graser on Topic 1
- 01/09/97 Dan Graser on Topic 2
- 01/09/97 Dan Graser on Topic 3
- 01/09/97 Dan Graser on Topic 4
- 01/09/97 Dan Graser on Topic 5
- 01/03/97 Chip Cameron on Topic 1
- 01/03/97 Chip Cameron on Topic 4
- 01/03/97 Chip Cameron on Topic 5
- 01/03/97 Chip Cameron on Topic 5
- 01/03/97 Chip Cameron on Topic 5
- 01/03/97 Chip Cameron on Topic 6
- 01/02/97 Bill Olmstead on [Public] Topic 2

December Postings - 12/31/96

- 12/26/96 Moe Levin on Topic 5
- 12/23/96 Donald Coates on [Public] Topic 2
- 12/23/96 Donald Coates on [Public] Topic 2
- 12/20/96 Bill Olmstead on Topic 5
- 12/20/96 Brad Mettam on Topic 5
- 12/20/96 Bill Olmstead on Topic 7
- 12/16/96 Brad Mettam on Topic 5
- 12/12/96 Moe Levin on Topic 5

- 12/12/96 Moe Levin on Topic 5
- 12/11/96 Bill Olmstead on Topic 2
- 12/11/96 Bill Olmstead on Topic 7
- 12/09/96 Claudia Newbury on Topic 2
- 12/09/96 Bill Olmstead on [Public] Topic 5
- 12/09/96 Bill Olmstead on Topic 5
- 12/09/96 Claudia Newbury on Topic 5
- 12/09/96 Claudia Newbury on Topic 7
- 12/04/96 Moe Levin on Topic 5
- 12/03/96 Brad Mettam on Topic 5

New Topic Area - 12/15/96

At Bill Olmstead's request, a new discussion topic *Can DOE file an electronic application in hypertext?* has been created.

November Postings - 11/30/96

- 11/26/96 Moe Levin on Topic 5
- 11/26/96 Abe van Luik on [Public] Topic 5
- 11/22/96 Brad Mettam on Topic 4
- 11/22/96 Bill Olmstead on Topic 4
- 11/22/96 Bill Olmstead on Topic 5
- 11/21/96 Bill Olmstead on Topic 2
- 11/21/96 Dan Graser on Topic 2
- 11/21/96 Chip Cameron on Topic 4
- 11/21/96 Chip Cameron on Topic 5
- 11/21/96 Claudia Newbury on Topic 5
- 11/20/96 Claudia Newbury on Topic 2
- 11/20/96 Claudia Newbury on Topic 4
- 11/19/96 Chip Cameron on Topic 3
- 11/19/96 Chip Cameron on Topic 4
- 11/14/96 Bill Olmstead on Topic 2
- 11/14/96 Brad Mettam on Topic 2
- 11/14/96 Bill Olmstead on Topic 3
- 11/14/96 Bill Olmstead on Topic 5

LSSNet Opens! - 10/31/96

The U.S. Nuclear Regulatory Commission (NRC) has developed an interactive web site for use by Licensing Support System Advisory Review Panel (LSSARP) members and their representatives.

In order to facilitate discussions among members of the LSSARP, the NRC re-used tools and methods developed for another electronic forum known as RuleNet. RuleNet was developed for the NRC by Lawrence Livermore National Laboratory (LLNL) to facilitate electronic discussions on rulemaking and other regulatory issues via the Internet.

The NRC implemented the LSSNet forum using RuleNet tools dedicated for the use of the LSSARP members and support staff. Discussion of issues and topics of interest are limited to these individuals although results of these discussions are expected to be made available to the public.

NRC Issues Topical Guidelines for the Licensing Support System - 09/09/96

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.69, "Topical Guidelines for the Licensing Support System," provides guidance on the documentary material that should be included in the Licensing Support System, which is an electronic information management system for the geologic repository for high-level waste.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides, both active and draft guides, may be obtained free of charge by writing the Office of Administration, Attn: Distribution and Services Section, USNRC, Washington, DC 20555-0001, or by fax at (301)415-2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.
(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 9th day of September 1996.
For the Nuclear Regulatory Commission

David L. Morrison, Director
Office of Nuclear Regulatory Research

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The LSSNet Forums

The concept of LSSNet involves a multi-phase discussion of LSS rulemaking - from examination of the general issues to consideration of specific rulemaking text. All of the electronic forums, or discussion areas, are now closed. However, previous comments and discussions may be viewed by using the hypertext links provided below.

Further activity in the LSS rulemaking process will be reported in the LSSNet News and References areas.

LSSNet Forum I - General Topics of Discussion.

- Topic 1 - What are the costs and benefits of moving from a dedicated, centralized system to a distributed system based on the Internet?
- Topic 2 - How should other improvements in computer technology be incorporated into the LSS?
- Topic 3 - What provisions of the LSS rule will need to be changed to reflect the incorporation of new technologies?
- Topic 4 - How should the backlog of "uncaptured", and possibly irrelevant, repository-related information be addressed?
- Topic 5 - What would the role of the LSS Administrator be under a distributed system?
- Topic 6 - How should advice from potential users of the LSS be provided for?
- Topic 7 - Can DOE file an electronic application in hypertext?

Summary of Participant Commentary in Phase I

LSSNet Forum II - Major Concerns in the Development of the LSS.

- Topic 1 - Should the requirement for an LSS be eliminated?
- Topic 2 - Should the requirement for an LSS be retained based on a distributed system?
- Topic 3 - Should DOE have the option to submit an electronic license application with hypertext links to relevant documents?

Summary of Participant Commentary in Phase II

LSSNet Forum III - Discussion of Draft Proposed Rulemaking Text.

- Topic 1 - Participant views on the acceptability of the conceptual approach outlined in the draft proposed rule.
- Topic 2 - Participant views on the specific provisions in the rulemaking text, for example, on the definition of "documentary material."
- Topic 3 - Participant views on major issues that still need to be addressed in either the rulemaking

text or the Statement of Considerations for the proposed rule.

Summary of Participant Commentary in Phase III

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Forum

Welcome!

LSS Rulemaking Issues

The Licensing Support System (LSS) concept grew out of the Nuclear Regulatory Commission's concern regarding how best to review the DOE license application for a high-level radioactive waste (HLW) repository. A centralized, electronic database, accessible by all parties appeared to offer the opportunity for significant time savings in conducting the licensing proceeding for the repository and, simultaneously, for the enhancement of any party's opportunity for effective participation. Plans for the LSS were first initiated in 1986 and were based on computer technology available in that time frame. It was intended to provide a central, shared, federally funded database of licensing information beginning in 1995. Budgetary shortfalls, however, and the unanticipated length of time that it would take to develop the licensing application for the repository, not only delayed the development of the LSS, but also resulted in the accumulation of a tremendous amount of potential licensing information, much of which may no longer be relevant to a licensing proceeding which may not begin until about 2002. In addition, since document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture **all** relevant material in the LSS is substantially larger than originally assumed. While the development of the LSS remained stalled, the state of technology in document automation and retrieval overtook the technology of 1986 on which the original LSS was to be based. With the widespread and common place use of computers to generate and maintain the documents of a party to the HLW licensing proceeding, the universal availability of the Internet to tie disparate and geographically dispersed systems together, and the availability of commercially available software applications relevant to LSS functionalities, the centralized LSS envisioned at the time the LSS rule was developed may be obsolete. Consequently, the Commission intends to evaluate how these new technologies can be integrated into the LSS rule while still maintaining the primary functions of the LSS:

1. A mechanism for the discovery of documents before the license application is filed;
2. Electronic transmission of filings by the parties during the proceeding;
3. Electronic transmission of orders and decisions related to the proceeding; and
4. Access to an electronic version of the docket.

It is the intent of the NRC staff to focus this rulemaking on how best to address changes in technology in regard to the LSS. There is no intent to re-visit the basic functionalities of the LSS that are reflected in the current 10 CFR Part 2, Subpart J.

To attempt to address these issues, the NRC is posting the following "topics" to guide the discussion during this phase of LSSNet. Other topics may be considered for discussion after review in the Administrative Forum.

- Topic 1 - What are the costs and benefits of moving from a dedicated, centralized system to a distributed system based on the Internet?
- Topic 2 - How should other improvements in computer technology be incorporated into the LSS?
- Topic 3 - What provisions of the LSS rule will need to be changed to reflect the incorporation of new technologies?
- Topic 4 - How should the backlog of "uncaptured", and possibly irrelevant, repository-related information be addressed?

- Topic 5 - What would the role of the LSS Administrator be under a distributed system?
- Topic 6 - How should advice from potential users of the LSS be provided for?
- Topic 7 - Can DOE file an electronic application in hypertext?

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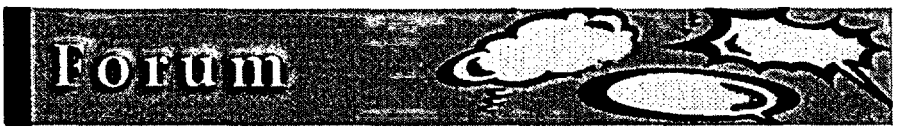

LSSNet Phase II

The concept of LSSNet is that participants proceed through a three-phase process from a general discussion of the LSS rulemaking issues in Phase I to the consideration of draft rulemaking text in Phase III.

Phase I may be viewed but is no longer active. Phase II is now in progress and will continue through **March 31, 1997.**

Based on the participant commentary, the NRC staff has proposed below some specific alternatives for addressing the major issues of concern in the development of the LSS:

- Topic 1 - Should the requirement for an LSS be eliminated?
- Topic 2 - Should the requirement for an LSS be retained based on a distributed system?
- Topic 3 - Should DOE have the option to submit an electronic license application with hypertext links to relevant documents?

In Phase II, we ask for participant comment on these alternatives, including responses to specific questions identified for each alternative. Although we believe that these alternatives are the major considerations, participants should not hesitate to suggest additional alternatives or combinations of alternatives for consideration by the NRC and other participants.

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Should the requirement for an LSS be eliminated?

One theme that emerged from the Phase I discussion was that a variety of circumstances had made 10 CFR Subpart J outmoded and unnecessary. A number of factors were cited in support of this proposition, including the fact that little progress had been made in developing the LSS since it's inception in 1988. For example, none of the backlog of material that was contemplated in 1988 has been loaded into the system, and material that was supposed to be contemporaneously loaded had now become part of the backlog. In addition, one of the key features of the LSS, i.e., linking key DOE decisions on the repository to specific DOE documents is not implemented. Furthermore, because of the lengthening horizon on repository characterization and decision making, many of the documents that may have once been relevant to the licensing of the repository may no longer be relevant. This same delay in developing the repository also places a less urgent perspective on the original objective of the LSS to assist the Commission in making a quick decision on licensing the repository. Advancements in litigation support technology make it possible for individual participants to develop, operate, and maintain their own electronic document collections. It is likewise easy for litigants to make their individual document collections easily accessible through the Internet. This makes a "distributed" LSS possible rather than a centralized system (see Topic 2), and also raises the issue of whether a prescriptive, highly procedural regulation is needed at all at this point. Finally, it was noted that many of the LSS functions would probably be a routine part of the Commission's normal licensing process described in its rules of general applicability in the near future.

The alternative proposed in Topic 1 suggests a substantial revision to Subpart J. Provisions requiring the creation of large, NRC operated LSS, the detailed requirements for document identification and loading by DOE and NRC, and the need for an LSS Administrator would be eliminated. The LSS participants would instead rely on the Internet access to individual participant's document collections. Assuming that participants established such sites, this would provide pre-license application access to most of the documents "relevant" to licensing the repository. Parties to the repository adjudicatory proceeding could conduct "supplementary" discovery on the production of documents during the time period during which the NRC staff reviewed the license application and prepared the Safety Evaluation Report.

In addition to comments on the desirability of this alternative, and the legitimacy of the assumptions on which it is based, the NRC would also ask LSSNet participants to address the following issues:

- Under this alternative, is there still a need for a document "relevancy" criterion?
- Should the Topical Guidelines be retained to provide this guidance as to "relevancy"?
- Could the "relevancy" criteria be simplified by identifying a set of basic documents that would be electronically available; by eliminating documents produced before a certain point in time; or by some other method?
- What LSS functions should be incorporated into the general rules for all NRC adjudicatory proceedings? Should these functions remain in Subpart J until the new rules of general applicability are promulgated?
- How would document discovery conducted after the license application was filed best be handled?
- Under this approach, is there any further need for an LSS Administrator, or at a minimum, for some type of coordinating mechanism for the informal "system" in addition to or instead of the preapplication licensing board? how, if at all, and to whom would potential users provide commentary on such issues as the availability of documents and the adequacy of individual websites? is it feasible to establish a voluntary process through which potential users could address issues of concern?

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Should the requirement for an LSS be retained based on a distributed system?

This alternative would retain the basic requirements of the LSS rule, but would provide for the establishment of a distributed system composed of individual participant websites, rather than the current centralized system. The LSS rule provisions eliminating the need for wholesale document production in the time period after the license application was submitted would be retained. Participants would have access to relevant documents before the license application was submitted. A prescriptive rule would be necessary to meet these objectives.

In addition to comments on the desirability of this alternative, and the legitimacy of the assumptions on which it is based, it is necessary to address the following issues:

- Is it too late to establish an adequate document data base to support the LSS?
- Could the document "relevancy" criteria be simplified by identifying a set of basic documents that should be electronically available; or by eliminating documents produced before a certain point in time; or by some other method?
- What changes would need to be made to the LSS Administrator's compliance assessment program under a distributed system?
- Should any financial assistance be provided to participants to provide the capability to access the individual participant websites or for participants to establish websites?
- What other revisions would need to be made to the current LSS rule to accommodate a distributed system?

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Should DOE have the option to submit an electronic license application with hypertext links to relevant documents?

The alternative presented in Topic 3 would permit DOE to develop an electronically accessible license application with hypertext links to all references in the license application. Although this could be a complement to either of the alternatives proposed in either Topics 1 or 2, it could provide another incentive to adopt the alternative in Topic 1 which would rely on a more informal system of document access nodes rather than on the prescriptive system in current Subpart J. In other words, under the "smart" license application concept, the documents relied on by DOE to support the license application would not only be electronically available, but would be also be tied to specific provisions in 10 CFR Part 60. This would at least partially implement one of the original objectives of the LSS by providing the link between DOE decisions and specific documents.

In addition to comments on the desirability of this alternative, and the legitimacy of the assumptions on which it is based, it is necessary to address the following issues:

- What universe of documents should be linked to the DOE license application, for example, only DOE supporting documents, all DOE documents relevant to the issue, other possibilities?
- What other types of issues would need to be considered in establishing this requirement?

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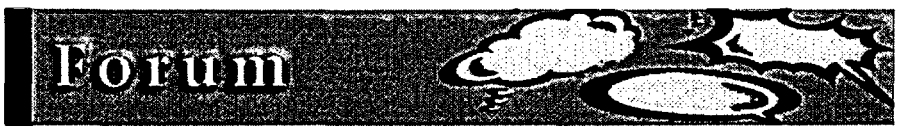

LSSNet Phase III

The concept of LSSNet is to proceed through a three-phase process from a general discussion of the LSS rulemaking issues in Phase I to the consideration of draft rulemaking text in Phase III. Phase I and Phase II may be viewed but are no longer active. LSSNet Phase III is now in progress and will remain active until **June 30, 1997.**

Based on the participant commentary during Phase I, the NRC staff proposed some specific alternatives in Phase II of LSSNet for addressing the major issues of concern in the development of the LSS. Most of the comments submitted during Phase II addressed the option set forth in Topic I of Phase II that would eliminate the requirement for an LSS. A major concern of one participant was that there is still a need, best served by the requirement for an LSS, for an organized process to ensure that the data and information necessary to evaluate site suitability is readily available. This participant also stated that nothing has occurred since the LSS rule was promulgated to change the basic assumptions that were the basis for the LSS requirements. The participant also supported retention of the Topical Guidelines as a basis for determining the "relevancy" of documents, and also retention of the relevancy standard for determining what documents must be included in the LSS. Another participant expressed concerns over whether simple access to a voluntary, distributed system of individual websites would provide the type of sophisticated litigation support discovery system necessary to prepare for the high-level repository adjudicatory proceeding. This participant also emphasized the need for careful planning and coordination among the potential parties through an advisory panel mechanism, to ensure that the websites are developed carefully from the very beginning of the process. No other comments were received on the potential disadvantages of pursuing a rulemaking based on Option 1.

Based on a consideration of the commentary on the Phase II Topics, the NRC staff has developed a draft proposed rule for participant discussion. The draft proposed rule is based on the eliminating the current requirement in 10 CFR Part 2, Subpart J for a centralized "Licensing Support System" administered by the NRC, with a requirement for participants to share their documentary material with other participants by providing electronic access to documents. The document submission requirements in Subpart J would be replaced by a requirement that potential parties to the repository licensing proceeding, including DOE and NRC, provide access to other potential parties to the electronic version of their documentary material. "Documentary material" has been defined as "any material or other information that a party or potential party plans to produce either during discovery by subpoena or deposition during the licensing of a candidate site for a geologic repository". The scope of "documentary material" would still be guided by the Topical Guidelines. The existing requirement of certification by NRC that DOE had complied with these requirements six months before the license application is submitted would also be retained. The requirements for an electronic hearing docket would also be retained, as well as the Pre-License Application Presiding Officer to rule on requests for access to the individual websites. An Advisory Review Panel is required for providing advice on electronic docket issues, but the requirement for an LSS Administrator would be eliminated.

We ask participants to address the following topics relevant to the draft proposed rulemaking text:

- Topic 1 - Participant views on the acceptability of the conceptual approach outlined in the draft proposed rule
- Topic 2 - Participant views on the specific provisions in the rulemaking text, for example, on the definition of "documentary material"
- Topic 3 - Participant views on major issues that still need to be addressed in either the rulemaking text or the Statement of Considerations for the proposed rule

Although we believe that these topics are the major considerations, participants should not hesitate to suggest additional or alternative topics for consideration by the NRC and other participants.

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