

July 22, 1997

SECY-97-154

FOR: The Commissioners

FROM: The LSS Senior Management Team /s/

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.

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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 Analyses (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

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

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 available 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 effect on the State's exercise of its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 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 the 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.

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 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, ~~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, Ssubject to the exclusions in § 2.1005 of this subpart and paragraphs (eb) and (dc) 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 effect on the State's exercise of its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 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 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.~~

~~_____ (e) (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. 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~~ 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.~~

~~(dc) 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.~~

~~(gd) 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(~~dc~~) 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-privileged documents of NRC, shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Offices, 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(ec) 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 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 ~~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(~~dc~~) 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 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) (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 (ec)(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 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 (fd) of this section.~~

~~(fd) (1) The LSS Advisory Review Panel shall provide advice to-(i) DØENRC 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.~~

(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 repository 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 ~~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 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 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 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.

§ 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.

§ 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 docketLicensing 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 (eb) and (dc) 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 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 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 governmental participants and any petitioners for intervention, or their counsel, to appear at a specified time and place, within seventy days after the notice of hearing is published, or such other time as the Commission or the 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 repository operations area, or amendments thereto, following an initial decision resolving all issues before the Presiding Officer in favor of the licensing action, upon making the appropriate licensing findings, except-

- (1) As provided in paragraph (c) of this section; or
- (2) As provided in any order issued in accordance with § 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 unforeseen 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.

