



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

July 31, 2000

OFFICE OF THE  
SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-00-0135

TITLE: PROPOSED RULE TO AMEND 10 CFR PART 2,  
SUBPART J, IN REGARD TO THE LICENSING  
SUPPORT NETWORK

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of July 31, 2000.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

  
Annette Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
ASLBP  
PDR

VOTING SUMMARY - SECY-00-0135

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	7/5/00
COMR. DICUS	X				X	6/30/00
COMR. DIAZ	X					6/30/00
COMR. McGAFFIGAN	X				X	7/7/00
COMR. MERRIFIELD	X				X	6/29/00

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on July 31, 2000.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: CHAIRMAN MESERVE  
SUBJECT: **SECY-00-0135 - PROPOSED RULE TO AMEND 10 CFR  
PART 2, SUBPART J, IN REGARD TO THE LICENSING  
SUPPORT NETWORK**

Approved  w/edits Disapproved  Abstain

Not Participating

COMMENTS:

See attached edits.



\_\_\_\_\_  
SIGNATURE

July 5, 2000

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

before the license application is submitted, and to supplant the need for the traditional discovery process used in NRC proceedings of the physical production of these documents after the license application is submitted. In addition, the Commission believed that early provision of these documents in an easily searchable form would allow for a thorough and comprehensive technical review of the license application by all parties and potential parties to the HLW licensing proceeding, resulting in better focused contentions in the proceeding. The LSN would also facilitate agency responses to FOIA requests by providing the public with electronic access to relevant documents.

*Freedom of Information Act*

The current requirements contained in the LSN rule require DOE and NRC to make their documentary material available in electronic form beginning thirty days after DOE's submission of its site recommendation to the President of the United States. All other participants must make their documents available in electronic form no later than thirty days after the date that the repository site selection decision becomes final after review by Congress. Originally, the LSN was conceived of as a large centralized information management system administered by what was then called the Licensing Support System Administrator. In order to take advantage of the advances in technology that occurred since the promulgation of the original rule, the Commission revised the rule to use the Internet to link geographically dispersed sites rather than relying on a complex and expensive centralized system (62 FR 60789; December 23, 1998). Although the Supplementary Information that accompanied these most recent amendments noted that the availability of the Internet to link geographically dispersed sites appears to have the potential to satisfy the requirements and objectives of Subpart J, no specific design for the LSN was set forth in that final rule nor were any specific performance requirements established except to specify that the overall design must be "effective and efficient". Further evaluation by the LSN Administrator, and consultation with the Commission's LSN Advisory Review Panel

The LSN homepage/web site would also provide information gathered by the LSN Administrator regarding documents the participants may have updated at their sites. It would also provide information about the performance of the participants' external servers such as server availability, the number of text or image files sent in response to queries, and the response time experienced at each server. It will also be used to post announcements about the overall LSN program or items of interest (hours of availability, scheduled outages, etc.) for the participant sites.

The Commission believes that the recommended design represents the least cost to both NRC and the individual parties to the HLW licensing proceeding, while at the same time providing high value to the users. <sup>Because it is</sup> Based on a proven technical solution that has been successfully implemented, <sup>of the recommended design</sup> will provide a document discovery system that will facilitate the NRC's ability to comply with the schedule for decision on the repository construction authorization. <sup>will</sup> provides an electronic environment that facilitates a thorough technical review of relevant documentary material. <sup>will</sup> ensures equitable access to the information for the parties to the HLW licensing proceeding. <sup>will</sup> ensures that document integrity has been maintained for the duration of the licensing proceeding. <sup>will</sup> most consistently provides the information tools needed to organize and access large participant collections. <sup>will</sup> features adequately scaled and adaptable hardware and software. <sup>will</sup> and includes comprehensive security, backup, and recovery capabilities.

#### IV. The Role of the LSN Administrator

The role of the LSN Administrator under the current rule is to coordinate access to, and the functioning of, the LSN, as well as to coordinate the resolution of problems regarding the availability and integrity of documentary material and data. As a necessary supplement to the

specification of the design standards set forth in this proposed rule, the Commission believes that the LSN Administrator should have additional responsibilities. The proposed rule would give the LSN Administrator the responsibility to review all participant website designs to ensure that they meet the design standards and to allow variances from the design standards to accommodate changes in technology, problems identified during initial operability testing of the individual websites or the "LSN site". The Administrator would also have the authority to develop and issue guidance for LSN participants on how best to incorporate the LSN standards in their system. Any disputes related to the Administrator's evaluation of participant compliance with the design standards would be referred to the Pre-License Application Presiding Officer under the authority of § 2.1010 of the current rule.

Section <sup>§</sup>2.1011(c)(3) and (c)(4) of the current rule give the Administrator the responsibility to "coordinate the resolution of problems" in regard to "LSN availability" and the "integrity of documentary material", respectively. In order to be more explicit regarding the Administrator's responsibilities, the Commission is proposing to amend these sections to authorize the Administrator to identify problems, notify the participant(s) of the nature of these problems, and recommend a course of action to the participant(s) to resolve the problem in <sup>concerning</sup> regard to LSN availability, § 2.1011(c)(3), or the integrity of documentary material,

§2.1011(c)(4). The LSN Administrator would also report all such problems and recommended resolutions to the Pre-License Application Presiding Officer provided for in § 2.1010 of the rule.

All disputes over <sup>the LSN Administrator's</sup> his recommendations as to documentary material or data availability and integrity will be referred to the Pre-License Application Presiding Officer.

require the DOE initial certification to be made at least eight months before the DOE license application is submitted. The existing provision in § 2.1012 authorizing the Director of the NRC Office of Nuclear Materials Safety and Safeguards not to docket the license application if DOE does not provide an updated certificate of compliance with the LSN rule is retained. The proposed revision will ensure that a reasonable period of time is available for the participants to have an adequate opportunity to access and use the DOE collection of documentary material before the license application is submitted.

If DOE cannot make the initial certification, the Commission would emphasize that DOE still has the obligation under Section 2.1003 to make the documentary material that is available at that time accessible to the participants through the LSN, rather than delaying all availability until the time that it can certify compliance. Any disputes arising in these circumstance would fall within the existing authority of the Pre-License Application Presiding Officer under § 2.1010.

#### VI. Section-by-Section Changes

The Commission is proposing two major revisions to § 2.1011 Management of Electronic Information. The first would add a new paragraph (b)(2) to specify the basic design standards for individual LSN participant websites. The second major revision would clarify the authority of the LSN Administrator in regard to these design standards.

In § 2.1011:

Paragraph (b)(2) would include the following design standards for LSN participant websites:

Paragraph (b)(2)(i) would require that the participants make textual (or, where non-text, image) versions of their documents available on a web accessible server which is able to be

(A) Network access must be HTTP/1.1 [<http://www.faqs.org/rfcs/rfc2068.html>] over TCP (Transmission Control Protocol, [<http://www.faqs.org/rfcs/rfc793.html>]) over IP (Internet Protocol, [<http://www.faqs.org/rfcs/rfc791.html>]).

(B) Associating server names with IP addresses must follow the DNS (Domain Name System), [<http://www.faqs.org/rfcs/rfc1034.html>] and [<http://www.faqs.org/rfcs/rfc1035.html>].

(C) Web page construction must be HTML version 4.0 [<http://www.w3.org/TR/REC-html40/>].

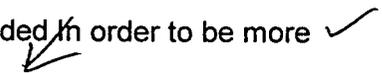
(D) Electronic mail (e-mail) exchange between e-mail servers must be SMTP (Simple Mail Transport Protocol, [<http://www.faqs.org/rfcs/rfc821.html>]).

(E) Format of an electronic mail message must be per [<http://www.faqs.org/rfcs/rfc822.html>] optionally extended by MIME (Multimedia Internet Mail Extensions) per [<http://www.faqs.org/rfcs/rfc2045.html>] to accommodate multimedia e-mail.

Section 2.1011(c) would be amended as follows to clarify the responsibilities and authority of the LSN Administrator:

Paragraph (c)(6) would require that the LSN Administrator evaluate LSN participant compliance with the basic design standards in § 2.1011(b)(2), and provide for individual variances from the design standards to accommodate changes in technology, problems identified during initial operability testing of the individual websites or the "LSN site", or the infeasibility of an individual LSN participant's strict adherence to guidelines because of unique technical problems that would not affect the effectiveness or efficiency of the LSN.

Paragraph (c)(7) would require that the LSN Administrator issue guidance for LSN participants on how best to comply with the design standards in § 2.1011(b)(2).

In § 2.1011, paragraphs (c)(3) and (c)(4) would also be amended  in order to be more explicit regarding the Administrator's responsibilities in regard to LSN availability and the

integrity of documentary material. The Commission is proposing to amend these sections to authorize the Administrator to identify problems, notify the participant(s) of the nature of these problems, and recommend a course of action to the participant(s) to resolve the problem in regard to LSN availability, § 2.1011(c)(3), or the integrity of documentary material, §2.1011(c)(4). In accordance with ~~Section~~ <sup>§</sup> 2.1010 of the rule, a dispute over the Administrator's evaluation of individual LSN participant website compliance with the basic design standards in proposed § 2.1011(b)(2) or the Administrator's recommendations as to documentary material or data availability and integrity would be referred to the Pre-License Application Presiding Officer. In the case of such referral, the Commission anticipates that the Pre-License Application Presiding Officer may wish to call upon the LSN Administrator to investigate and report on particular problems and to recommend proposed solutions.

Section 2.1009 would be amended to clarify that the initial participant certification of compliance ("initial certification") must be made at the time that each participant's documentary material must be made available under § 2.1003 of the rule. In addition, § 2.1009 would be amended to require the initial certification of compliance by DOE to be made at least eight months before DOE submits the license application for the repository.

#### Plain Language

The Presidential memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule

NOTATION VOTE

200 JUN 26 AM 9: 44

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER DICUS  
SUBJECT: **SECY-00-0135 - PROPOSED RULE TO AMEND 10 CFR  
PART 2, SUBPART J, IN REGARD TO THE LICENSING  
SUPPORT NETWORK**

Approved  Disapproved  Abstain

Not Participating

COMMENTS:

See attached comments.

Aneta Joy Dicus  
SIGNATURE

June 30, 2000  
DATE

Entered on "STARS" Yes  No

## COMMENTS OF COMMISSIONER DICUS ON SECY-00-0135

I approve of the publication of the proposed rule for public comment subject to the following comments.

This rule inherently is technically complex and of necessity must use computer-related technical jargon in developing and explaining the proposed rule language. Our Federal Register Notice, however, can do a better job in some places of explaining the technical criteria in plain English. While in all probability each participant will have technically qualified persons to understand and comment on these criteria, we still have an obligation to explain to the general member of the public what this rule is about. While there was clearly an attempt to do this in discussing the technical criteria and the LSN web page concept, the attempts failed in several instances. To assist in responding to this concern the following rewrite of the second paragraph under Criterion "2" on the bottom of page 7 of the federal register notice is provided as an example of a simplification of an explanation, based on what I understand from the FRN explanation.

The proposed criteria provides acceptable electronic formats for parties to provide bibliographical information on a document or the full text of a document on their individual web pages in a form that can be searched by the LSN web page.

Other examples of items that need a better plain language explanation are:

Criterion 3 - (What is "Unstructured" data)

Criterion 4 - Last line is not clear. Terms like "predictable algorithms" or "compression and uncompression... compatibility" are not understandable for most of the public.

LSN Site Design, Page 11, two full paragraphs - These paragraphs are not easy to understand. Terms that may be familiar to those who use computers and the internet frequently (e.g. "crawling", "Portal" "structured data", "unstructured data", "data dictionaries", "normalized" "servers") are not necessarily self-defined for the casual computer user. These paragraphs need to be rewritten in plainer English.

*gjd*  
6-30-00

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DIAZ

SUBJECT: **SECY-00-0135 - PROPOSED RULE TO AMEND 10 CFR  
PART 2, SUBPART J, IN REGARD TO THE LICENSING  
SUPPORT NETWORK**

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

No comments.

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 \_\_\_\_\_  
 SIGNATURE

6.30.2000  
 \_\_\_\_\_  
 DATE

Entered on "STARS" Yes  No \_\_\_\_\_

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MCGAFFIGAN  
SUBJECT: **SECY-00-0135 - PROPOSED RULE TO AMEND 10 CFR  
PART 2, SUBPART J, IN REGARD TO THE LICENSING  
SUPPORT NETWORK**

Approved   X   <sup>w/comment</sup> Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_  
Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

Edward M. Gaffigan Jr.  
SIGNATURE  
July 7, 2000  
DATE

Entered on "STARS" Yes   X   No \_\_\_\_\_

## **Commissioner McGaffigan's comments on SECY-00-0135**

I commend the staff for the expeditious development of this rule amendment. I approve publication of the notice of proposed rulemaking subject to the attached minor edits and the resolution of one issue as described below. I agree with Commissioner Dicus' vote that the Federal Register notice should be edited for readability, to the extent practicable.

### **Revise the text (page 26) of proposed 2.1009(c) to read:**

(c) if DOE is unable to make an initial certification at the time specified in Section 2.1003(a) for making documentary material available, DOE shall make an initial certification as soon as possible. In any event, the DOE initial certification must be made either:

- (1) at least eight months before DOE submits the license application for the repository; or
- (2) if site designation has been permitted to take place under Section 115 of the Nuclear Waste Policy Act, then within the time remaining before submittal of the license application is required under Section 114(b) of the Nuclear Waste Policy Act.

### **Revise the Supplementary Information by deleting the first full paragraph on page 15 and substituting the following:**

The Commission is aware that Section 114(b) of the Nuclear Waste Policy Act requires DOE to submit the license application for the repository within ninety days of the date of any site designation that is permitted to take effect under Section 115 of the Act. In the unlikely case that DOE cannot make the initial certification until after the site designation is permitted to take place, the requirement in proposed Section 2.1009(c) for DOE to make the initial certification at least eight months before submission of the license application would conflict with the ninety day submission requirement in the Act. In order to eliminate this potential conflict between the statute and the rule, proposed Section 2.1009(c) permits DOE to submit its application even though this would not provide the full eight months of LSN availability prior to such submission. However, the Commission would emphasize:

- It fully expects DOE to make the initial certification at the time that DOE is required to comply with the requirement to make its documentary material available, i.e., thirty days after DOE's site recommendation to the President. Proposed Section 2.1009(c) is only being added to address the possibility of DOE noncompliance. The basic requirements of the LSN rule have been in place for over ten years and the Commission would anticipate full and timely DOE compliance with these requirements.
- If DOE cannot make the initial certification at the time first required (thirty days after the site recommendation to the President), DOE still has the obligation under Section 2.1003 to make the documentary material that is available at that time accessible to participants through the LSN, rather than delaying all availability until the time that it can certify compliance. Any disputes arising in these circumstances would fall within the existing authority of the Pre-License Application Presiding Officer under Section 2.1010.

• Curtailing the amount of time that the LSN is available before the submission of the license application would reduce the potential benefit that the LSN was to provide in terms of facilitating an effective and efficient NRC review of the DOE license application and providing complete document disclosure at the outset of the proceeding. If DOE does not make the initial certification until after the date that site designation is permitted to take place under Section 115 of the Nuclear Waste Policy Act, this benefit would be substantially diminished. Thus, the Commission anticipates that this would be the initiating event for the Commission to report to the Secretary of Energy and the Congress, pursuant to Section 114(e)(2) of the Nuclear Waste Policy Act, that it could not meet the three year review required under Section 114 (d) of the Act because of DOE failure to comply with section 2.1003(a) or 2.1009(c)(1) of the LSN rule.

EMG

NOTATION VOTE

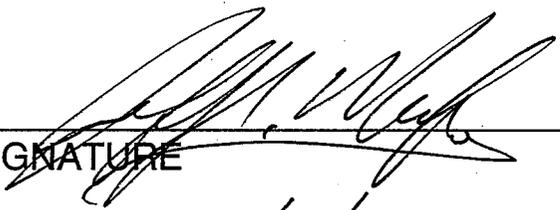
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MERRIFIELD  
SUBJECT: **SECY-00-0135 - PROPOSED RULE TO AMEND 10 CFR  
PART 2, SUBPART J, IN REGARD TO THE LICENSING  
SUPPORT NETWORK**

Approved  Disapproved  Abstain

Not Participating

COMMENTS: *Approve subject the attached edits.*

  
\_\_\_\_\_  
SIGNATURE

*6/29/00*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

before the license application is submitted, and to supplant the need for the traditional discovery process used in NRC proceedings of the physical production of these documents after the license application is submitted. In addition, the Commission believed that early provision of these documents in an easily searchable form would allow for a thorough and comprehensive technical review of the license application by all parties and potential parties to the HLW licensing proceeding, resulting in better focused contentions in the proceeding. The LSN would also facilitate agency responses to FOIA requests by providing the public with electronic access to relevant documents.

The current requirements contained in the LSN rule require DOE and NRC to make their documentary material available in electronic form beginning thirty days after DOE's submission of its site recommendation to the President of the United States. All other participants must make their documents available in electronic form no later than thirty days after the date that the repository site selection decision becomes final after review by Congress. Originally, the LSN was conceived of as a large centralized information management system administered by what was then called the Licensing Support System Administrator. In order to take advantage of the advances in technology that occurred since the promulgation of the original rule, the Commission revised the rule to use the Internet to link geographically dispersed sites rather than relying on a complex and expensive centralized system (62 FR 60789; December 23, 1998). Although the Supplementary Information that accompanied these most recent amendments noted that the availability of the Internet to link geographically dispersed sites appears to have the potential to satisfy the requirements and objectives of Subpart J, no specific design for the LSN was set forth in that final rule nor were any specific performance requirements established except to specify that the overall design must be "effective and efficient".

*At that time it was concluded that*

Further evaluation by the LSN Administrator, and consultation with the Commission's LSN Advisory Review Panel

(LSNARP) of potential system users, ~~would be~~ necessary before the nature and scope of these design requirements would become clear. Under § 2.1011(c)(1) of the current rule, the LSN Administrator ~~has the responsibility to identify~~ these types of LSN implementation issues to the Commission for Commission consideration. *is also responsible for bringing*

The Commission now believes that certain minimum design standards for data structure and data transfer ("design standards") for individual participant websites are necessary to ensure that the LSN meets its objectives and functions. Without such standards, there is a potential that the parties and potential parties to the HLW licensing proceeding may be unable to identify needed documents efficiently and effectively because the system is slow, cumbersome, or simply unavailable, given the large number of documents and the many users trying to access the system. In addition, the lack of required standards may lead to skepticism about document and data integrity. The system should ensure that it provides the tools needed for participants' document discovery and for the technical staff to perform a thorough technical review of the license application. Any deficiencies in the information management system for the HLW licensing proceeding could easily result in time-consuming disputes that place the three-year repository application review schedule at risk. The Commission believes the cost of system failure is too high not to try to ensure effective operation of the system through establishing some minimal design standards.

In addition to the proposed design standards, the Commission is also proposing to supplement the existing responsibilities of the LSN Administrator by making it clear that the Administrator has the authority to review participant website designs to verify compliance with the basic design standards, including the authority to allow variances from those standards. In addition, it will make clear that the LSN Administrator has the authority to issue guidance to the LSN participants on how they might best meet the design standards. The LSN Administrator will