

DOCKET NUMBER
PROPOSED RULE **PR 2**
(65 FR 50937)

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Department of Energy
Washington, DC 20585

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October 6, 2000

A. L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

COMMENTS ON NOTICE OF PROPOSED RULEMAKING FOR LICENSING PROCEEDINGS FOR THE RECEIPT OF HIGH-LEVEL RADIOACTIVE WASTE AT A GEOLOGIC REPOSITORY: LICENSING SUPPORT NETWORK, DESIGN STANDARDS FOR PARTICIPATING WEBSITES (10 CFR PART 2)

Dear Ms. Vietti-Cook:

The U.S. Department of Energy (DOE) is pleased to submit comments on the U.S. Nuclear Regulatory Commission's (NRC) August 22, 2000, "Notice of Proposed Rulemaking for Amendments to 10 CFR 2, Subpart J, Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository."

The proposed revisions would establish basic design standards for participant websites in the Licensing Support Network (LSN), clarify the authority of the LSN Administrator to establish guidance for and review compliance with the design standards, and clarify the timing of participant compliance certifications.

The Department fully supports the underlying objective of the LSN system to ensure that interested parties will have an opportunity to review documentary material in preparation for NRC's License Application review. Indeed, we have been a strong proponent of NRC's efforts to streamline the document discovery process, and are committed to taking the steps necessary to ensure that the LSN system achieves its objectives. Additionally, the Department is highly supportive of the rule's use of new information management technologies to make information available to interested parties. The Department has used and will continue to use web-based technology to make its publications and supporting documents promptly available.

Our principal concern with the proposed rule relates to the approach that is being proposed for the timing of our certification of compliance. The proposed rule would require that all of the Department's documentary material be made available beginning in the pre-license application phase, which is defined to begin thirty days after a site recommendation by the Department. While we support early access to information, we believe that there is a more effective way to facilitate preparation of focused contentions and ensure an efficient licensing process than by tying the Department's certification of its documentary material to the Site Recommendation process. We recommend that the initial certification of compliance by the Department be linked to submission of the License Application. This could be accomplished by requiring the

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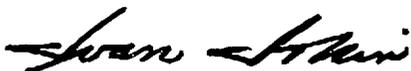
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certification to be submitted no later than six months in advance of submission of the License Application. Importantly, in recommending this approach, the Department is committed to ensuring that interested members of the public have a full six months in advance of submission of the License Application to review the Department's documentary material. To accomplish this, the Department would recommend that the following language be included as part of the rule: "In no event shall DOE's License Application be docketed prior to six months from the date of DOE's certification." Our more detailed comments on this issue are set forth in the enclosure.

Also included in the enclosure are more detailed comments on other issues and proposed clarifications related to the supplementary information in the notice of proposed rulemaking. If you have questions on these comments, please contact Monica Michewicz at (202) 586-9738 or April V. Gil at (702) 794-5578.

Sincerely,



Ivan Itkin, Director
Office of Civilian Radioactive
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Enclosure: Comments on Proposed Revisions to the 10 CFR Part 2 Rule

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**DEPARTMENT OF ENERGY (DOE) COMMENTS
ON PROPOSED REVISIONS TO THE 10 CFR PART 2
LICENSING SUPPORT NETWORK (LSN), DESIGN STANDARDS FOR
PARTICIPATING WEBSITES**

The comments are ordered to reflect the importance of policy and technical concerns.

1. 2.1009 Procedures

Timing of Participant Compliance Determinations

The proposed rule seeks to clarify the timing of the initial participant certifications of compliance under section 2.1009. Specifically, the proposed revision to paragraph (b) of section 2.1009 would require that the initial participant certification of compliance be made at the time that each participant's documentary material is required to be made available under section 2.1003. The Department of Energy (DOE) documentary material must be made available "beginning in the pre-license application phase," which is defined in section 2.1001, in part, as the phase that "begins 30 days after the date the DOE submits the site recommendation to the President pursuant to section 114(a) of the Nuclear Waste Policy Act." In the event that the DOE is unable to make a timely initial certification, the proposed rule provides that the U.S. Nuclear Regulatory Commission (NRC) would report to the Secretary of Energy and the Congress that this would result in a curtailment of the time that the LSN would be available before the submission of the License Application. On this basis, the proposed rule provides that the NRC would report that it will not be able to meet the three-year License Application review period required under the Nuclear Waste Policy Act (NWPA).

The DOE fully supports the objective of ensuring that interested members of the public have comprehensive and early access to relevant documentary material, so as to facilitate early identification and resolution of licensing issues, as well as preparation for the NRC's formal licensing proceeding. Indeed, this basic objective has been at the heart of the NRC's deliberations since 1988 over how best to structure an efficient, effective document retrieval system to support its formal licensing proceeding for a geologic repository, so as to permit the NRC to meet its statutory obligation to complete its licensing proceeding in three years.

While the DOE supports the basic objective of ensuring early access to documentary material, it is concerned about the approach that the NRC appears to be proposing to take with regard to the timing of DOE's certification of compliance, as well as the provisions proposed in section 2.1009(c) for a failure to meet the certification deadline.

By way of background, it is important to recall that the fundamental purpose of the LSN, as well as the predecessor Licensing Support System (LSS), is to ensure that potential parties have timely access to documentary material sufficiently in advance of NRC's formal licensing proceeding "so as to permit the earlier submission of better focused contentions, resulting in a substantial saving of time during the proceeding" (*see* 54 FR 14926). With this objective in mind, the NRC initially proposed, and subsequently codified as part of the original LSS rule, a requirement that the DOE submit all of its documentary material 6 months in advance of the submission of a license application by the DOE. This requirement was adopted by the NRC in 1989 (*see* 54 FR 14925) and was in effect until the NRC issued the rule establishing the LSN.¹

In the rulemaking, which led to the creation of the LSN in 1998, the NRC fundamentally changed the approach to ensuring that all of the documentary material was entered into the system. Whereas the prior LSS rule required the LSS Administrator to certify that the DOE had submitted all documentary material for entry into the system, the new LSN rule imposed the certification obligation on the DOE. The LSS rule had specified that the LSS Administrator was to certify the DOE's substantial and timely compliance with document submission requirements 6 months prior to submission of a License Application. However, as the current proposed rulemaking acknowledges, the LSN rule adopted in 1998 did not clearly specify when this certification by the DOE was to be made. The proposed rule would require the DOE's initial certification to be made at the time that its documentary material is required to be made available, which is a period that begins thirty days after the Site Recommendation goes to the President and ends when the license application is docketed under section 2.101(f)(3).

Consistent with the approach taken by the NRC in its LSS rule, and recognizing that the intent of the LSN is to support the NRC's License Application review process, rather than the DOE's Site Recommendation process, the DOE believes that the objective of ensuring early access by potential parties to documentary material can be best achieved by a simple, straight-forward requirement that the initial certification of compliance by the DOE occur no later than a specified period of time (*e.g.*, 6 months) in advance of submission of the License Application by the DOE. This approach would have three important advantages over the current proposal:

First, it would appropriately link the initial certification to submission of the License Application, as opposed to the Site Recommendation. This is consistent with the basic purpose of the LSN, which is to support the NRC's licensing process, rather than the DOE's Site Recommendation process.

¹ The Statement of Considerations for the current proposed rule appears to suggest that the basic requirements regarding the timing of participant compliance determinations "have been in place for over ten years." *See* 65 FR 50941. Although the focus on early access to documents has been in place throughout this period, the current approach to certifying and determining compliance with the document availability requirements was adopted in 1998 as part of the LSN rulemaking. For the previous 9 years, the certification requirement resided with the NRC, and the DOE was to submit its documentary material 6 months prior to submitting its License Application.

Second, if certification is tied to the timing of the Site Recommendation in the manner set forth in the proposed rule, it is virtually impossible to say with certainty how much time would be available for interested members of the public to review the DOE's documentary material prior to submission of the License Application. By contrast, by requiring certification to be made 6 months prior to the DOE's submission of its License Application, as the DOE is proposing, interested members of the public will be assured a defined period of time to review the DOE's documentary material (i.e., 6 months), regardless of the inherently uncertain timing associated with the Site Recommendation process.

This concern arises because, unavoidably, there is significant schedule uncertainty in the site recommendation and designation process, particularly as it relates to the time that will be required for Presidential and Congressional decision making on the Site Recommendation. Consequently, it is impossible to say with certainty how much time would be available, under the earliest time for certification contemplated in the approach proposed by the NRC, for potential parties to begin reviewing the documentary materials in the LSN prior to the beginning of the License Application proceeding. To take one example, under the shortest scheduling scenario for the site recommendation and designation process, potential parties would have 4 months to review documents in the LSN in preparation of the License Application proceeding.² By contrast, the Presidential and Congressional decision-making process for the site could significantly extend the time frame between certification and submission of the License Application. Indeed, because the NWSA does not define the time frame for Presidential review and approval, it is impossible to know how long this process might take. In either event, whether the site recommendation and designation process goes quickly or takes an extended period of time, the DOE may wish to adjust or otherwise modify its License Application in response to the comments resulting from the Presidential and Congressional approval process, or to incorporate in the License Application the results of additional scientific work that will likely take place during this period.³

Third, this approach will provide necessary and appropriate flexibility for the DOE to process the documentary material that will be required to be entered into the LSN, and to do so in a time frame that will support the NRC's License Application review. Additionally, assuming that an initial certification tied to the License Application will occur at a point in time later than the earliest point provided for under the proposed rule, it is likely that the relevant documents to support the License Application will be more fully developed and that, as a result, potential parties will be provided with information that is most current to the License Application to be submitted 6 months hence. Consistent with the original objective of the LSS, this will facilitate the preparation of

² This scenario assumes that the Site Recommendation is approved by the President immediately upon receipt from the Secretary and transmitted directly to Congress, and that no Notice of Disapproval is filed with Congress.

³ In this regard, Congress expressed its view, in conference report language (H. Rep. No. 106-907, p. 108), accompanying the FY2001 Energy and Water Development Appropriation bill, that it expects DOE to continue to analyze further design improvements and enhancements after Site Recommendation and prior to submitting the License Application to the NRC. This is a further indicator of why the LSN should be connected to the License Application rather than the Site Recommendation.

more focused contentions and a more efficient licensing process. It is also the approach that was previously proposed and adopted by the NRC as sufficient to allow it to conduct its review within the three-year period provided for by the NWPA.

For the foregoing reasons, the DOE recommends that the NRC modify the proposed rule by deleting proposed section 2.1009(c)(1) and (2) in its entirety, and making the following revisions to the rule to provide that the DOE's initial certification of compliance must occur no later than 6 months in advance of its submission of the License Application:

- i) In the definition of "Pre-license application phase" in existing section 2.1001, strike the phrase "30 days after the date the DOE submits the site recommendation to the President pursuant to section 114(a) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10134(a)), and insert in lieu thereof the following:

"on the date that DOE submits its certification pursuant to 2.1009(b)."

- ii) In existing section 2.1003(a), strike the phrase "NRC and DOE shall make available, beginning in the pre-license application phase, and each other potential party, interested governmental participant or party shall make available no later than 30 days after the date the repository site selection decision becomes final after review by Congress," and insert in lieu thereof the following:

"NRC, and DOE, and each other potential party, interested governmental participant or party, shall make available no later than the date of the required certification specified in 2.1009(b)."

- iii) Delete the second sentence of proposed section 2.1009(b) and insert in lieu thereof the following:

"The certification by DOE shall be submitted to the Pre-License Application Presiding Officer no later than six months prior to the submission of DOE's License Application to the Commission. Certifications by the NRC and each other potential party, interested governmental participant or party shall be submitted to the Pre-License Application Presiding Officer no later than sixty days after the date of DOE's certification. In no event shall DOE's License Application be docketed prior to six months from the date of DOE's certification."

2. 2.1011(c)(4) Management of electronic information

This paragraph describes the LSN Administrator's responsibility for identifying any problems regarding the "integrity of documentary material." DOE believes that the intent of this phrase is related to the documentary material being accurately represented in the LSN, not to the content or completeness of the documentary material.

DOE recommends substituting the phrase "integrity of documentary material" with "*fidelity of the documentary material.*"

Similarly, 65 FR 50941, Section IV, The Role of the LSN Administrator, the last sentence in the first paragraph (continuing from 65 FR 50940) states that "All disputes over the LSN Administrator's recommendations as to documentary material or data availability and integrity will be referred to the Pre-License Application Presiding Officer." However, sections 2.1011 (c)(3) and (c)(4) refer to recommendations on LSN availability and integrity of documentary material, not to documentary material or data availability.

DOE recommends that the NRC replace "documentary material or data availability and integrity" with "LSN availability and fidelity of documentary material."

3. 2.1009 Procedures

Paragraph (b) requires that the responsible official designated must certify, to the best of his/her knowledge, the documentary material specified in section 2.1003 has been identified.

In September, 1996, the NRC issued Regulatory Guide 3.69, *Topical Guidelines for the Licensing Support System*, based on the format provided in Draft Regulatory Guide DG-3003, "*Format and Content for the License Application for the High-Level Waste Repository*," which reflected the requirements in 10 CFR 60. The NRC is in the process of revising the licensing criteria at 10 CFR 60 for disposal of spent nuclear fuel and high-level radioactive wastes in a geologic repository at Yucca Mountain, Nevada. The criteria in proposed 10 CFR 63 and expected to be in the Yucca Mountain Review Plan, reflect a risk-informed, performance-based approach.

DOE notes that if the proposed 10 CFR 63 becomes final, a revision to Regulatory Guide 3.69 will be needed to address potential changes pertaining to the list of topics for which LSN participants should submit documentary material for entry into the LSN.

4. 2.1011(b)(2)(iv) Management of electronic information and 65 FR 50939, Section II, LSN Design Standards, Item (4)

These paragraphs presently read: "TIFF images will be stored at 300 dpi (dot per inch), gray scale images at 150 dpi with eight bits of tonal depth, and color images at 150 dpi

with 24 bits of color depth.” However, the image resolution should be a minimum, not an inflexible specific number.

DOE recommends that the NRC modify the proposed rule as follows (changes underlined): *“TIFF images will be stored at 300 dpi (dots per inch) or greater, gray scale images at 150 dpi or greater with eight bits of tonal depth, and color images at 150 dpi or greater with 24 bits of color depth.”*

5. 2.1011(b)(2)(v) Management of electronic information

This paragraph presently reads: “The header record must contain fielded data identifying its associated object (text or image) file name and directory location.” However, a document may have both text and image files, and more than one of each.

DOE recommends that the NRC adopt the following language (changes underlined): *“The header record must contain fielded data identifying its associated objects (text and/or image) file names and directory locations.”*

Similarly, 65 FR 50939, Section II, LSN Design Standards, Item (5) second paragraph currently reads: “The bibliographic header must contain fielded data identifying its associated text or image file name and directory location.” That is not always true since a document may have both text and image files, and more than one of each.

DOE recommends Item (5) be changed to read (changes underlined): *“The bibliographic header must contain fielded data identifying its associated text and/or image file names and directory locations.”*

6. 2.1011(b)(2)(v) Management of electronic information

This paragraph presently reads: “The participants shall programmatically link the bibliographic header record with the text or image file it represents. The header record must contain fielded data identifying its associated object (text or image) file name and directory location. However, a document may have both text and image files, and more than one of each.”

DOE recommends that the NRC adopt the following language (changes underlined): *“The participants shall programmatically link the bibliographic header record with the text and/or image file it represents. The header record must contain fielded data identifying its associated object (text and/or image) file name and directory locations.”*

Similarly, 65 FR 50939, Section II, LSN Design Standards, Item (5) first paragraph currently reads: “The parties or potential parties must programmatically link the bibliographic header record with the text or image file it represents to provide for file delivery and display from participant machines using the LSN system.” However, a document may have both image and text files, and more than one of each.

DOE recommends that the NRC incorporate the following revised language (changes underlined): *"The parties or potential parties must programmatically link the bibliographic header record with text and/or image files it represents to provide for file delivery and display from participant machines using the LSN system."*

Also, 65 FR 50941, Section VI, Section-By-Section Changes, the eighth paragraph currently reads: "The header record must contain fielded data identifying its associated object (text or image) file name and directory location." However, a document may have both, and more than one of each.

DOE recommends that the NRC adopt the following language (changes underlined): *"The bibliographic header record must contain fielded data identifying its associated objects (text and/or image) file names and directory locations."*

7. 65 FR 50939, Section II, LSN Design Standards

Item (1) currently reads: "The participants shall make textual (or, where non-text, image) versions of their documents available...." DOE has images of all documents in the RIS, but not the full text for any page in the document that was marked "image-only" during records processing (even if it contains some text). However, some participants may only have native file (Word or Word Perfect), so they may not have "images" of textual documents. Requiring absolutely one or the other would be a problem if interpreted literally.

DOE recommends that the NRC provide flexibility by revising the language (in section II and elsewhere) as follows: *"The participants shall make textual and/or image versions of their documents available...."*

Item 1(3) suggests that changes to documents previously entered will be permitted if "other parties or potential parties are notified of the change".

Because DOE will not have the ability to know all potential parties in order to notify them of changes, *DOE recommends that this requirement be either deleted or clarifications made that changes made within a specified time period be posted in a notice section of the participant LSN website.*

Item (2) second paragraph currently reads: "A "comma delimited" file is a way to identify where a particular relational database file begins and ends." The reference "comma delimited" is to separate column values.

DOE recommends that the NRC revise the language as follows (changes underlined): *"A "comma delimited" file is a way to identify where the column values for each row in a particular relational database file begin and end."*

Item (4) first paragraph currently reads: "Alternatively, images may be stored in a page-per-document format if software is incorporated in the web server that allows single-page

representation and delivery.” This is inconsistent with the description in the previous sentence.

DOE recommends that the NRC incorporate the following revised language (in section II and elsewhere - changes underlined): “*Alternatively, images may be stored in a image-per-document format if software is incorporated in the web server that allows image-per-page representation and delivery.*”

Item (4) second paragraph currently reads: “...that parties or potential parties can use to make non-textual document materials viewable with current browser/viewer software.” However, referenced image formats can be used for textual material as well.

DOE proposes that the NRC revise the language as follows: “*...that parties or potential parties can use to make document materials viewable with current browser/viewer software.*”

8. 65 FR 50941, Section VI, Section-by-Section Changes

The sixth paragraph currently reads: “Paragraph (b)(2)(iii) would require that textual material be formatted to comply with the US.ISO_8859-1 character set and be in one of the following acceptable formats: native word processing....”

DOE recommends inserting “*plain text,*” in front of “native word” when discussing the acceptable text format.

9. 65 FR 50943, Regulatory Analysis

Column two, the last sentence of the third paragraph, currently reads: “Participant servers' versions of the document serve as backup copies should the LSN site become inoperative.” This could be interpreted to mean that the participant sites should be able to function independently to serve the documents to the public if the LSN site is unavailable.

DOE recommends that the NRC provide a clarification as provided in the revised language (changes underlined): “*Participant servers' versions of the documents serve as backup copies by being available to the LSN Administrator to facilitate recovery of the central LSN site should the central LSN site become inoperative.*”

10. 65 FR 50938, Section I, Background Information

Throughout the proposed rule, including the background information, there are references to the LSN connecting to the “participant’s website.”

Because DOE now has and will continue to have websites that are non-LSN related (OCRWM and YMSCO homepages), it is recommended that, where applicable, the NRC change “participant website” to “participant LSN website.”

Throughout the proposed rule (e.g., 65 FR 50939, Section II (4), second paragraph), the "LSN site" is referred to.

DOE recommends referring to the homepage where the search and retrieval aspects of the LSN reside as the "central LSN site," rather than simply the "LSN site." This would provide further clarification and distinction between the NRC's LSN site from the participant LSN sites.