

July 31, 2000

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	
COMR. DICUS	X				X	
COMR. DIAZ	X				X	
COMR. MCGAFFIGAN	X				X	
COMR. MERRIFIELD	X				X	

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.

Commissioner Comments on SECY-00-0135

Commissioner Dicus

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.

Commissioner McGaffigan

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.