

July 31, 2000

MEMORANDUM TO: Karen D. Cyr
General Counsel

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

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

The Commission has approved publication of the notice of proposed rulemaking for a 45-day public comment period in the Federal Register. The staff should incorporate the comments provided below and the changes noted in the attachment.

(OGC)

(SECY Suspense:

8/18/00)

In general, the staff should rewrite portions of the notice to explain some of the technical criteria in plain English. For example, on page 7 and continuing on to page 8, criterion 2, second paragraph could be rewritten as:

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.

Similarly, Criterion 3 should be revised to better explain "unstructured data." The next to last line of Criterion 4 and the two full paragraphs on page 11 should also be revised to use terms more clearly understood by the general public.

Attachment: Changes to the Federal Register Notice in SECY-00-0135

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
EDO
ASLBP
CIO
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

Changes to the Federal Register Notice in SECY-00-0135

1. On page 4, line 7, spell out FOIA.
2. On page 4, revise the next to last line to read ‘~~At that time it was concluded that f~~Further evaluation by’
3. On page 5, revise line 1 to read ‘... system users, ~~would be~~ **was** necessary before’
4. On page 5, revise line 3 to read ‘... Administrator **is also responsible for bringing** ~~has the responsibility to identify~~ these types of’
5. On page 12, 2nd paragraph, revise line 3 to read ‘**Because it is b**Based on a proven’
6. On page 12, 2nd paragraph, revise line 4 to read ‘... implemented, ‡ **the recommended design** will provide’
7. On page 12, 2nd paragraph, revise line 6 to read ‘... authorization, ‡ **will** ~~provides~~ an electronic’
8. On page 12, 2nd paragraph, revise line 7 to read ‘... documentary material, ‡ **will** ensures equitable’
9. On page 12, 2nd paragraph, revise line 8 to read ‘... licensing proceeding, ‡ **will** ensures that document’
10. On page 12, 2nd paragraph, revise line 9 to read ‘... licensing proceeding, ‡ **will** most consistently ~~provides~~ the information’
11. On page 12, 2nd paragraph, revise line 10 to read ‘... participant collections, ‡ **will** ~~features~~ adequately’
12. On page 12, 2nd paragraph, revise line 11 to read ‘... and software, ‡ **will** includes comprehensive’
13. On page 13, 1st full paragraph, revise line 1 to read ‘Section**s** 2.1011(c)(3)’
14. On page 13, 1st full paragraph, revise lines 6 and 7 to read ‘... resolve the problem **concerning** ~~in regard to~~ LSN availability’
15. On page 13, revise the next to last line to read ‘... disputes over **the LSN Administrator’s** ~~his~~ recommendations as’

16. Delete the last full paragraph on page 14 and first full paragraph on page 15 and revise the Supplementary Information as follows:

Although the Commission 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, the Commission is proposing to adopt a new § 2.1009(c) which would address the unlikely possibility that DOE may not be able to make a timely initial certification. 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. However, the Commission also recognizes that circumstances may raise the possibility that DOE would be unable to provide the initial certification at the time set for compliance. Under proposed § 2.1009(c), if DOE cannot make the initial certification at the time first required, DOE then would have the obligation to make the initial certification as soon as possible. In addition, DOE would be required to provide the Pre-License Application Presiding Officer with a submission that, with as much specificity as is reasonably possible, details the circumstances regarding its noncompliance, including (1) the type and volume of the documentary material it has not made available so as to preclude it from making a certification; (2) an explanation as to why this documentary material has not been made electronically available; and (3) an estimate of a date certain by which this documentary material will be made available. Further, in addition to the section 2.1009(b) requirement of a twelve-month certification update, this DOE submission must be updated at ninety-day intervals until such time as DOE is able to certify that all the documentary material in question is available.

DOE would remain under an obligation under § 2.1003 to provide access to all the documentary material that is available at the time specified in § 2.1003 and that is not identified in its submission explaining its noncertification, rather than delaying all document availability until the time that it can certify compliance. Any disputes regarding the DOE noncertification submission and any updates, including the validity of the information provided in the submission and any updates, would fall within the existing authority of the Pre-License Application Presiding Officer under § 2.1010.

The Commission notes that 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 is unable to make a timely initial certification, this benefit would be substantially diminished. Thus, the Commission anticipates that this would be an 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.

17. On page 15, 3rd line from the bottom, delete the extra colon.
18. On page 17, 2nd line from the bottom, the “in” after “amended” should start with a lowercase “i”.
19. On page 18, revise line 5 to read ‘ ... accordance with Section § 2.1010 of the ...’

20. On pages 26 and 27, revise proposed § 2.1009(c) to read:

(c) If DOE is unable to make an initial certification as specified in § 2.1003(a), DOE shall make an initial certification as soon as possible. In addition, at the time specified in § 2.1003(a) for making documentary material available, DOE shall provide the Pre-License Application Presiding Officer with a submission that describes with as much specificity as is reasonably possible the circumstances involved, including (1) the type and volume of the documentary material for which it is not able to make a certification, (2) an explanation as to why the documentary material has not been made electronically available, and (3) an estimate of a date certain by which that documentary material will be made available. Notwithstanding the provisions of paragraph (b) of this section, this submission shall be updated at ninety-day intervals until such time as DOE is able to certify that the documentary material in question is available.