

IN RESPONSE, PLEASE
REFER TO: M010424A

April 24, 2001

MEMORANDUM FOR: Karen D. Cyr
General Counsel

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

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 10:25
A.M., TUESDAY, APRIL 24, 2001, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-01-0039 - Final Rule to Amend 10 CFR Part 2, Subpart J, in Regard to the
Licensing Support Network

The Commission approved a final rule amending 10 CFR Part 2, Subpart J. The final rule amends the Commission's Rules of Practice applicable to the use of the Licensing Support Network (LSN) for the licensing proceeding on the disposal of high-level waste at a geologic repository. The amendments establish the basic data structure and transfer standards ("design standards") that LSN participant websites must use to make documentary material available, clarifies the authority of the LSN administrator to establish guidance for LSN participants on how to best meet the design standards and to review participant designs for compliance with the standards, and clarifies the timing of participant compliance certifications.

Following incorporation of the changes described in the attachment, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(OGC)

(SECY Suspense: 5/25/01)

SECY-01-0039 identifies a compatibility issue associated with the adjudicatory docket and ADAMs concerning single-image and multi-image TIFF images. OGC should keep the Commission informed of the resolution of this and of any other serious compatibility issues that may emerge.

Attachment: Comments and Changes to the Final Rule in SECY-01-0039

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

Comments and Changes to the Final Rule in SECY-01-0039

General Comments

1. The rule should be amended to link the requirement for DOE to make its documents publicly available to the timing of DOE's submission of its application to the NRC pursuant to the Nuclear Waste Policy Act (NWPA) § 114(b).
2. The Federal Register notice uses the description of "submission of the application" to refer to the timing of two different events. The first use of the phrase refers to the timing of DOE's tendering of its application to the NRC pursuant to NWPA § 114(b). The second use of the phrase refers to the docketing of the application, which serves as the starting point for measuring the time the Commission has to issue a final decision approving or disapproving the issuance of a construction authorization pursuant to NWPA § 114(d). Whenever the timing of an activity is linked to "submission of the application," the Federal Register notice should be revised to indicate whether the reference is to the tendering of an application pursuant to NWPA § 114(b) or the docketing of the application pursuant to NWPA § 114(d). The Federal Register notice should make it clear that the two dates may be different, and that the Commission's interpretation of "submission" for purposes of NWPA § 114(d) does not affect the interpretation of "submission" for purposes of NWPA § 114(b). OGC should review the usage of the words "submission" and "submits" in the Statement of Considerations and in the final rule language, to be sure the terms are used consistently and explained appropriately, or to determine whether another term may be more appropriate to avoid confusion.
3. The Federal Register notice should make it clear that DOE is responsible for meeting both the 6-month LSN rule for making documents available prior to submitting its application pursuant to section 114(b), and its obligation to timely submit its application pursuant to the deadlines set in that section.

Specific Changes to the Federal Register Notice

4. On page 2, item (1), revise the last line to read ' ... (DOE) **submits its** license application for the repository ~~is submitted~~.
5. On page 2, last paragraph, line 5, insert a footnote after "submission" explaining NRC interpretation of NWPA § 114(d) versus other references in this notice to when DOE submits (i.e., tenders) the application.
6. On page 2, last paragraph, revise the last line to read ' ... before **DOE submits its** license application ~~is submitted~~ as well as'
7. On page 3, revise line 2 from the top to read ' ... license application is **docketed submitted**.'
8. On page 3, 1st full paragraph, revise line 4 to read ' ... revised the rule (**63 FR 71729**;

December 30, 1998) (62 FR 60789; December 23, 1997) to create'

9. On page 3, 1st full paragraph, revise line 6 to read '... provisions of in the LSN'
10. On page 3, last paragraph, revise line 1 to read '... Supplementary Information accompanying the 1998 revised rule on the 1997 rulemaking noted that'
11. On page 5, 1st full paragraph, line 9, add a comma after 'users'.
12. On page 17, revise the last line to read '... accession number ~~ML003722750~~ ML00372258, or from the LSN Administrator. Contact Dan Graser, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone (301) 415-7401, email djg2@nrc.gov.
13. On page 21, 1st full paragraph, revise line 7 to read '... months in advance of [its] submission of the'
14. On page 22, revise line 9 from the top to read '... six months before DOE's the submission of'
15. On page 22, line 11, revise the apostrophe to the correct symbol.
16. On page 23, 1st full paragraph, revise line 7 to read '... the material before DOE submitted the license application was submitted.' Revise lines 10 and 11 to read '... the date specified for DOE to submit submission of the DOE license application'
17. On page 23, verify the font sizes are consistent with the remainder of the document.
18. On page 24, revise line 2 from the top to read '... six months before DOE submitted the submission of the license application.'
19. On page 24, revise lines 3 through 10 from the top to reflect the six month requirement noted above in the general comments.
20. On page 24, 1st full paragraph, revise line 1 to read '... and certification to the date DOE submits submission of the' Revise lines 4 and 5 to read '... documents available when certainty of an actual repository the submission of the license application'
21. On page 25, revise line 2 from the top to read '... application will be received submitted.' Revise lines 3 and 4 to read '... providing for a six an eight -month period of DOE documentary material availability before DOE submits the license application is submitted (which is the'
22. On page 25, bullet 1, revise lines 2 and 3 to read '... no later than six eight months before DOE submits the license application is submitted.'
23. On page 25, bullet 2, revise line 4 to read '.... six eight months before DOE submits submission of the license' Revise line 6 to read '... eliminate unnecessary coordination effort, the'
24. On page 26, bullet 2, revise lines 1 and 2 to read '... for docketing until at least six eight

months have passed ~~since~~ between the DOE certification of compliance and receipt of the application.

25. On page 26, 1st full paragraph, revise line 1 to read 'Delaying ~~docketing~~ receipt until the requisite ~~six eight months have review time had passed~~ since DOE's certification of the availability of DOE documents will mitigate'
26. On page 26, 1st full paragraph, at the end of line 5, remove the paragraph break and revise the next line to begin '~~This is because~~ On some related points the Commission interprets'
27. On page 27, line 1, start a new paragraph after 'revision.'
28. On page 27, line 7, after "Under the framework in the final rule," add ~~if DOE fails to make its initial certification pursuant to § 2.1009(b) in a timely manner, at least six months prior to tendering its application, the Commission will not docket the application until 6 months after initial certification. Not permitting earlier docketing will provide six months of access to DOE documents that was intended under the provisions of § 2.1009(b).~~ Delete remainder of the sentence.
29. On page 29, paragraph 1, revise line 3 to read '... remaining time before ~~DOE submits~~ submission of the license' Revise line 6 to read '... documentary material before ~~DOE submits~~ the license application is submitted.' Revise line 8 to read '... the period before ~~it submits~~ the license application is submitted.'
30. On page 30, 1st full paragraph, revise lines 7 through 9 to read '... is available ~~via the NRC website in ADAMS at accession number ML003722758 or, from the LSN Administrator, as indicated above in this notice. Contact Dan Graser, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone (301) 415-7401, email djg2@nrc.gov.~~
31. On page 38, revise line 3 from the bottom to read '... at least ~~six eight~~ months'
32. On page 39, revise line 1 from the top to read '... party shall make ~~its~~ their documentary material'
33. On page 39, revise line 7 through 9 from the top to read '... and Safeguards may not determine that the license application is ~~not~~ acceptable for docketing ~~until unless~~ a period of ~~six eight~~ months has elapsed ~~since between~~ the DOE initial certification under § 2.1009 and the submission of the application.'
34. On page 39, paragraph number (3), revise line 4 to read '... date of ~~submission of the~~ DOE initial'
35. On page 47, paragraph (a), revise line 2 to read '... no later than ~~six eight~~ months'
36. On page 48, paragraph (b), revise the last line to read '... at the time ~~DOE submits of~~ submission of the license'

37. On page 52, paragraph (a), replace lines 1 and 2 with, 'If Department of Energy fails to make its initial certification at least six months prior to tendering of the application, upon receipt of the tendered application, notwithstanding the provisions of § 2.101(f)(3), the Director of NMSS will not docket the application until at least six months have elapsed from the time of certification. The Director may determine that the tendered application is not acceptable for docketing under this subpart if the application is not'