



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

April 24, 2001

OFFICE OF THE
SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-01-0039

TITLE: FINAL 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 noted in an Affirmation Session and recorded in the Affirmation Session Staff Requirements Memorandum (SRM) of April 24, 2001.

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

Annette L. 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
PDR

VOTING SUMMARY - SECY-01-0039

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	3/16/01
COMR. DICUS	X				X	4/2/01
COMR. DIAZ	X					3/16/01
COMR. McGAFFIGAN	X				X	3/30/01
COMR. MERRIFIELD	X				X	4/2/01

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 affirmed the final rule as reflected in the Affirmation Session SRM issued on April 24, 2001.

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook
Secretary of the Commission

FROM: CHAIRMAN MESERVE

SUBJECT: SECY-01-0039 - FINAL RULE TO AMEND 10 CFR PART 2,
SUBPART J, IN REGARD TO THE LICENSING SUPPORT
NETWORK

Approved X w/edits Disapproved _____ Abstain _____

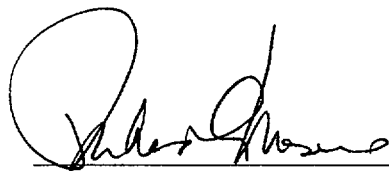
Not Participating _____

COMMENTS:

I approve the final rule to amend 10 CFR Part 2, Subpart J, with the attached minor edits to the draft Federal Register notice. I commend OGC, the ASLBP, and the LSN Administrator for resolving the issue of the timing of initial compliance with the LSN rule.

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.

I also certify that the rule, if promulgated, will not have a significant impact on a substantial number of small entities.


SIGNATURE

March 16, 2001
DATE

Entered on "AS" Yes X No _____

discovery process used in NRC proceedings involving 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, 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. It was also contemplated that the LSS would facilitate agency responses to Freedom of Information Act (FOIA) requests by providing the public with electronic access to relevant documents.

Originally, the LSS was conceived of as a large centralized information management system administered by what was then called the Licensing Support System Administrator. To take advantage of the advances in technology that occurred since the issuance of the original rule, the Commission revised the rule (62 FR 60789; December 23, 1997) to create the LSN that would use the Internet to link geographically dispersed sites rather than relying on a complex and expensive centralized system. The current provisions of ⁹in 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.

Although the Supplementary Information on the 1997 rulemaking 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." To establish these specific

ensure a defined period of time for review. In addition, DOE noted that it may wish to adjust or otherwise modify its license application in response to comments resulting from the Presidential or Congressional review of the site recommendation or to incorporate the results of additional scientific work that will likely take place during this period. Third, the approach will provide the necessary and appropriate flexibility for DOE to process the documentary material that will be required to be entered into the LSN, and to make it more likely that the material entered will be more fully developed and current. Accordingly, DOE recommended revising various provisions in the rule to require that the availability of documentary material, and the accompanying certification, should occur no later than six months before the submission of the license application. In no event should the Commission receive the license application before six months from when DOE actually made the certification. DOE's recommendation would have NRC and other participant document availability and certification occur sixty days after DOE's certification.

In response to these comments, the Commission agrees that a balance needs to be drawn between the need to provide an adequate amount of time for participants to review the documentary material in advance of the license application and the need to be as efficient as practicable in providing this information. This latter need includes avoiding the unnecessary expense and time to DOE and other participants that may result from making documentary material available before there is some certainty that a license application will become a reality, as well as avoiding the unnecessary expense and time that may result from the provision and review of a significant number of documents that may later become irrelevant or obsolete. In terms of the consideration of an adequate amount of time for participants to review the documentary material, the Commission identified early participant access to the LSN documentary material as a desirable objective and this continues to be an important component

of efforts to meet the mandated three-year timetable for conducting the NRC's licensing review, including any adjudicatory proceeding, regarding the DOE application because of the system's capacity to provide early, equitable document discovery and contention formulation for the participants. The NRC and other participants have already made substantial financial and staff resource commitments to have their document collections available, as well as the LSN website ready for the 2001 LSN operational date which was based on of DOE's announced schedule. These commitments were based on the requirements for document text availability that have been a regulatory requirement since 1989.

With these considerations in mind, and before setting forth its approach on this issue, in the final rule, the Commission addresses two of the several points made by the commentors. First, in light of the many statements on "tying" the certification to the DOE site recommendation, the Commission notes that its initial selection of the submission of the site recommendation as the point for DOE and NRC to make their documentary material available was to pick a specific event to trigger the document availability requirements that would allow sufficient time for participants to review the material before the license application was submitted. The time period provided in the Commission's current regulations for the review of documentary material is based on the DOE site recommendation to the President because the approximately eight months of time between that event and the date specified for submission of the DOE license application under the then extant DOE schedule for the repository, was viewed by the Commission as an appropriate amount of time for pre-application review of pertinent documents. By so providing the Commission did not intend to imply that the focus of the LSN was the review of the site recommendation. Second, as noted by several commentors, the original NRC rule on the "Licensing Support System" or "LSS"

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- The other participants will be required to make their documentary material available, and to provide an initial certification of compliance, ninety days after the DOE certification;
- NRC will not accept the DOE license application for docketing until at least eight months have passed between the DOE certification of compliance and receipt of the application. Regarding this requirement, the Commission notes that the pendency of a dispute contesting some aspect of the DOE initial certification would not be a reason to delay the NRC acceptance of the DOE license application.

Delaying ^{acceptance} receipt until the requisite eight-month review time has passed will mitigate the need, as described in the Supplementary Information for the proposed rule, 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 DOE was unable to comply with the LSN rule.

On some related points, the Commission interprets the requirement in section 114(d) of the Act that the Commission “shall issue a final decision approving or disapproving the issuance of a construction authorization not later than three years after the date of submission” of the license application, as three years from the docketing of the license application. This interpretation was reflected in the issuance of the original LSS rule (see e.g., 10 CFR 2.1001 - “Pre-license application phase”), and is codified in the HLW repository hearing schedule contained in Appendix D to 10 CFR Part 2. This interpretation is consistent with the Commission’s general practice since its establishment in 1975 to tie hearing schedules to the docketing of a license application rather than its filing by the applicant, for the obvious reason that a license application may be substantially deficient in some material respect and must be

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DICUS

SUBJECT: **SECY-01-0039 - FINAL RULE TO AMEND 10 CFR PART 2, SUBPART J, IN REGARD TO THE LICENSING SUPPORT NETWORK**

Approved x Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.

 Aneta Joy Dicus
SIGNATURE

 April 2, 2001
DATE

Entered on "STARS" Yes x No

COMMENTS OF COMMISSIONER DICUS ON SECY-01-0039

I commend the staff for doing an admirable job of making a highly technical, jargon rich, subject matter relatively understandable for the public. I approve the final rule, subject to one change. NEI, DOE, and the State of Nevada have all agreed that 6 months is an adequate time period for review of DOE documents prior to DOE submittal of a repository application. I believe we should accept the proposed timeframe on which all three of these commenters seem to agree. My approval, therefore, is contingent on changing the final rule to reflect that DOE certification related to document availability must occur 6 months prior to submittal of a repository application.

gjd
4-2-01


AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DIAZ


SUBJECT: **SECY-01-0039 - FINAL 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.



SIGNATURE

3.16.01

DATE

Entered on "STARS" Yes X No _____

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

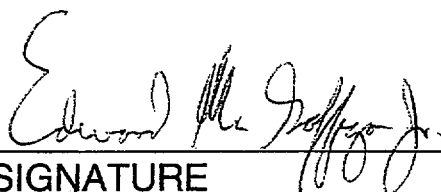
SUBJECT: **SECY-01-0039 - FINAL RULE TO AMEND 10 CFR PART 2, SUBPART J, IN REGARD TO THE LICENSING SUPPORT NETWORK**

Approved ✓ ^{w/comments & edits} Disapproved _____ Abstain _____

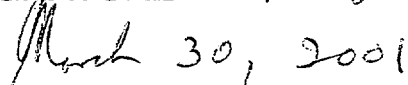
Not Participating _____

COMMENTS:

See attached.



SIGNATURE



DATE

Entered on "STARS" Yes ✓ No _____

Commissioner McGaffigan's Comments on SECY-01-0039

I vote to approve publication of the Federal Register notice subject to the attached specific marked-up edits and subject to the final rule containing the requirement that DOE certify that it has made all its documents available at least 6 months before "submitting" (i.e. tendering) the application. I agree with the DOE, State of Nevada, and NEI comments that six months before DOE submits its license application appears to be an adequate amount of time for advance availability of DOE documents.

In order to clarify the Commission's statement in this notice regarding NRC's interpretation of the word "submission" in section 114(d) of the Nuclear Waste Policy Amendments Act, OGC should add a footnote in the location indicated in the attached mark-up of page 2 of the FRN explaining the Commission's interpretation and contrasting that usage with the other references in the FRN and the rule to the date DOE "submits" (i.e. "tenders") the license application in compliance with its NWPA requirement under § 114(b). The attached mark-up attempts to remove the word "submission," where possible, to avoid confusion, but 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.

Some of the attached edits have attempted to clarify, but OGC should review and confirm, that the "compliance" element in this rule, §2.1012, should state that the Director of NMSS may determine that the application is not acceptable for docketing review (preliminary acceptance review) until 6 months have passed since the DOE certification of availability of DOE documents. (The draft provision referred to acceptability for docketing. However, the decision about docketing the application will not be made at the time the DOE application is received, but instead, that decision would be made after the staff's acceptance review has been completed: after an additional estimated 60-90 days.) The addition of this concept may require additional explanation in the Statements of Consideration.

EMG

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

RIN 3150-AG44

Licensing Proceedings for the Receipt of High-Level Radioactive
Waste at a Geologic Repository: Licensing Support Network,
Design Standards for Participating Websites

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its Rules of Practice applicable to the use of the Licensing Support Network (LSN) for the licensing proceeding on the disposal of high-level waste (HLW) at a geologic repository. The amendments will establish the basic data structure and transfer standards ("design standards") that participant LSN websites must use to make documentary material available. The amendments will also clarify the authority of the LSN Administrator (LSNA) to establish guidance for LSN participants on how best to meet the design standards and to review participant designs for compliance with the standards. Finally, the amendments will clarify the timing of participant compliance certifications.

EFFECTIVE DATE: [insert date thirty days after publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, U.S. Nuclear
Regulatory Commission, Washington DC 20555-0001, telephone (301) 415-1642, e-mail
FXC@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's regulations in 10 CFR Part 2, Subpart J, provide for the use of an electronic information management system in the HLW repository licensing proceeding. Originally issued on April 14, 1989 (54 FR 14925), the information management system currently required by Subpart J is to have the following functions:

- (1) To provide a Licensing Support Network (LSN) that allows full text search and retrieval access to the relevant documents of all parties and potential parties to the HLW repository licensing proceeding beginning in the time period before the Department of Energy (DOE) ^{submits its} license application for the repository ~~is submitted~~;
- (2) To provide for electronic submission of filings by the parties, as well as the orders and decisions of the Atomic Safety and Licensing Board during the proceeding; and
- (3) To provide access to an electronic version of the HLW repository licensing proceeding docket for use during the hearing.

The creation of the LSN -- originally called the "Licensing Support System" (LSS) -- was stimulated by the requirements of Section 114(d)(2) of the Nuclear Waste Policy Act of 1982 (NWPA). This provision requires the Commission to issue a final decision approving or disapproving issuance of the construction authorization for a geologic repository for HLW within three years of the "submission" of the DOE license application. The Commission anticipated that the HLW proceeding would involve a substantial number of documents created by well-informed parties regarding numerous, complex issues. The Commission believed that the LSS could facilitate the timely NRC technical review, and the timely petitioner "discovery-type" review, of DOE's license application by providing for electronic access to relevant documents before ^{DOE submits its} the license application ~~is submitted~~, as well as supplant the need for the traditional

Put footnote here explaining NRC interpretation of NWPA § 114(d) versus other references in this notice to when DOE submits (i.e. tenders) the application

discovery process used in NRC proceedings involving the physical production of these documents after the license application is ~~submitted~~ ^{docketed}. In addition, the Commission believed that early provision of these documents in an easily searchable form would allow for a thorough, 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. It was also contemplated that the LSS would facilitate agency responses to Freedom of Information Act (FOIA) requests by providing the public with electronic access to relevant documents. X

Originally, the LSS was conceived of as a large centralized information management system administered by what was then called the Licensing Support System Administrator. To take advantage of the advances in technology that occurred since the issuance of the original rule, the Commission revised the rule ~~(62 FR 60789, December 23, 1997)~~ ^(63 FR 71729, December 30, 1998) to create the LSN that would use the Internet to link geographically dispersed sites rather than relying on a complex and expensive centralized system. The current provisions of 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. X

Although the Supplementary Information ^(accompanying the 1998 revised rule) ~~on the 1997 rulemaking~~ 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." To establish these specific

design standards, on August 22, 2000 (65 FR 50937), the Commission issued a proposed revision to its rules applicable to the LSN.

The proposed amendments would:

- Establish certain minimum design standards for data structure and data transfer ("design standards") for individual participant websites that are necessary to ensure the LSN meets its objectives and functions;
- 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 would 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; and
- Clarify the timing of the participant compliance certifications.

II. Comments on the Proposed Rule

The Commission received six comments on the proposed rule, as well as one supplemental comment from DOE clarifying some of its initial comments. Copies of those letters are available for public inspection and copying at the NRC Public Document Room, 11555 Rockville Pike, Room O-1F12, Rockville, MD, on the NRC website at www.NRC.GOV, and in ADAMS. The comments fall into the following categories:

1. Comments on the proposed LSN design standards;
2. Comments on the proposed revisions to the responsibilities and authority of the LSN Administrator;

3. Comments on the design of the LSN site and the Regulatory Analysis; and
4. Comments on the timing of participant compliance certifications.

The Commission also received several comments on the Level One and Level Two Functional Requirements for the LSN. The Level One Functional Requirements identify all of the specific functions that the LSN must perform to achieve the requirements of the rule. The Level Two Functional Requirements provide more detailed information on how these functions will be performed. The functional requirements will eventually be issued by the LSN Administrator as guidance on the design standards. However, they were not part of the proposed rulemaking but were circulated to the LSN Advisory Review Panel (LSNARP) for preliminary review. The LSNARP is an NRC advisory committee composed of potential LSN users chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2, to provide advice to the LSN Administrator and the Commission on technical and policy issues concerning the LSN. LSNARP comments will be addressed directly by the LSN Administrator. Copies of the functional requirements can be obtained from Dan Graser, LSN Administrator, U.S. Nuclear Regulatory Commission, Washington D.C. 20555-0001 or by email at DJG2@nrc.gov.

1. Comments on the Proposed LSN Design Standards.

There were a number of general comments on the proposed design standards. Nye County, Nevada, the host county and situs jurisdiction for the potential high-level nuclear waste repository at Yucca Mountain, agreed with the need for the NRC to establish certain minimum design standards for individual participant LSN websites to avoid confusion and promote confidence in the process and the integrity of documents and data. Furthermore, the County stated that the design standards "will help us in ensuring that our site will meet the required

standards." However, the County's support for the design standards is conditioned on the Commission's stated intent to provide flexibility for a participant to deviate from any guidance developed by the LSN Administrator regarding the standards to take into account individual needs and differences, at least so long as the fundamental design requirements are met. In response to the County's concern, the Commission re-affirms its willingness to provide this type of flexibility. However, the Commission notes that the reference in the Supplementary Information to "flexibility" was made in the context of any guidance developed to implement the design standards. Regarding the standards themselves, the proposed rule would give the LSN Administrator the authority to allow variances from the standards to accommodate changes in technology or problems identified during initial operational testing of the individual participant LSN websites or the central LSN site. This authority has been carried forward into the final rule at § 2.1011(c)(6).

The Nuclear Energy Institute (NEI) noted that the proposed amendments represented a valuable tool for use in the repository licensing process and endorsed NRC's selection of the design standards. However, NEI also stated that guidance on implementation of the standards will be necessary. In response, the Commission notes that this guidance will be developed by the LSN Administrator.

DOE also was highly supportive of the proposed use of new information management technologies to make information available to interested parties. DOE stated its intent to use and continue to use web-based technology to make its publications and supporting documents promptly available. DOE also recommended clarifying the term "participant website" to read "participant LSN website," because a participant may have websites that are not related to the LSN. The Commission agrees that this is a necessary clarification and will use the recommended term through out the rule. DOE also recommends revising the term "LSN site",

In its initial comments, DOE also noted that the Supplementary Information to the proposed rule stated that "[a]ll 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" (See 65 FR 50941). However, according to DOE, proposed § 2.1011(c)(3) only refers to "LSN availability" and not to "documentary material or data availability." Section 2.1003 of the current regulations uses the term "availability" in the context of the obligation of participants to identify and make available documentary material. Thus "availability" not only refers to the functioning of a participant website but also to whether the requisite material has been made available. The Commission notes that proposed § 2.1011(c)(3), although referring to "LSN availability," also includes references to "the availability of individual participant's data." Nevertheless, the Commission has revised § 2.1011(c)(3) to be more explicit on the nature of "LSN availability."

3. Comments on the Regulatory Analysis and the Design of the Central LSN Site

NEI commented on a portion of the Regulatory Analysis in which the NRC states that the recommended design needs to be "based on a proven technical solution that has been successfully implemented." NEI requested that examples of such implementation should be provided. Examples of successful portal implementations for document management applications were provided at the February 23, 2000, LSN Advisory Review Panel meeting, as well as in documentation that was provided at that meeting. They included:

<http://tis.eh.doe.gov/portal/home.htm>; <http://www.osti.gov/EnergyFiles/> and

<http://igm.nlm.nih.gov/>. In addition, website locations (URLs) were included in the NRC's

Business Case Analysis for the LSN, which is available via the NRC website in ADAMS at accession number ML003722750.

ML003722758, 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.

[also
see -
p. 30]

DOE commented that the discussion for LSN design Alternative 3 should be revised, otherwise it "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." The narrative that DOE was referring to stated that participant servers' versions of the document would serve as backup copies should the LSN site become inoperative (see 65 FR 50943). DOE recommended that the language be revised to read "participants 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." The Commission does not agree with this recommendation. The referenced design does not levy a requirement on participant servers for search and retrieval software capabilities to be made available. However, if participants elect to have search and retrieval capabilities at their websites, those capabilities could, indeed, be used in lieu of the LSN interface should the participants choose to make their external collections accessible to others besides the LSN crawler software. In both cases, the documents maintained by the participants as the source collection, whether on a server or on a transfer tape, could serve as the backup copy of the document.

NEI asked several questions regarding the portal architecture referred to in the Regulatory Analysis: "Has NRC made specific decisions with regard to the portal software (i.e.: Which one? Who makes it? What does it cost? Is it proprietary?, etc.) Does NRC intend to make such decisions in consultation with the LSNARP?"

NRC decisions on portal architecture were made in consultation with the LSNARP, as documented in the LSNARP meeting materials of October 13, 1999 and February 23, 2000. The decision on the specific products used was made based on government procurement practices used for competitive procurement to deliver an operational system meeting stated

application." Furthermore, NEI asserted that this time period would be "consistent with the original compliance expectation established for the LSS in 1989." NEI recommended that NRC compliance be set at the same time as DOE compliance, and for others after DOE and NRC compliance. In summary, NEI stated that "[o]ther participants would also not be encumbered to comply before compliance would be needed. This would make the network less likely to be cluttered with irrelevant information if DOE were to need to make adjustments to its repository design for licensing as a result of comments received during or conditions placed upon it by the site recommendation process. It would also assure that participants do not confuse the site recommendation with a licensing action."

DOE submitted comments similar to those of Nevada and NEI on this issue. While DOE stated its support for early access to information, DOE believed that there is a better way to facilitate focused contentions for the licensing proceeding and to ensure an efficient licensing process than tying DOE's certification of its documentary material to the Site Recommendation. DOE recommended that the initial certification of compliance be linked to its submission of the license application. Furthermore, DOE noted that it is "committed to ensuring that interested members of the public have a full six months in advance of ^{its} submission of the license application to review the Department's documentary material." ✕

DOE's rationale for its recommendation was threefold. First, its recommendation would link the initial certification to the License Application. According to DOE, 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. Second, if certification were tied to the Site Recommendation, as it is in the proposed rule, it would be "virtually impossible" to predict how much time would be available for review of the documentary material before the license application is submitted. In contrast, tying the certification to the license application would

ensure a defined period of time for review. In addition, DOE noted that it may wish to adjust or otherwise modify its license application in response to comments resulting from the Presidential or Congressional review of the site recommendation or to incorporate the results of additional scientific work that will likely take place during this period. Third, the approach will provide the necessary and appropriate flexibility for DOE to process the documentary material that will be required to be entered into the LSN, and to make it more likely that the material entered will be more fully developed and current. Accordingly, DOE recommended revising various provisions in the rule to require that the availability of documentary material, and the accompanying certification, should occur no later than six months before ^{DOE's} ~~the~~ submission of the license application. In no event should the Commission receive the license application before six months from when DOE actually made the certification. DOE's recommendation would have NRC and other participant document availability and certification occur sixty days after DOE's certification.

In response to these comments, the Commission agrees that a balance needs to be drawn between the need to provide an adequate amount of time for participants to review the documentary material in advance of the license application and the need to be as efficient as practicable in providing this information. This latter need includes avoiding the unnecessary expense and time to DOE and other participants that may result from making documentary material available before there is some certainty that a license application will become a reality, as well as avoiding the unnecessary expense and time that may result from the provision and review of a significant number of documents that may later become irrelevant or obsolete. In terms of the consideration of an adequate amount of time for participants to review the documentary material, the Commission identified early participant access to the LSN documentary material as a desirable objective and this continues to be an important component

of efforts to meet the mandated three-year timetable for conducting the NRC's licensing review, including any adjudicatory proceeding, regarding the DOE application because of the system's capacity to provide early, equitable document discovery and contention formulation for the participants. The NRC and other participants have already made substantial financial and staff resource commitments to have their document collections available, as well as the LSN website ready for the 2001 LSN operational date which was based on of DOE's announced schedule. These commitments were based on the requirements for document text availability that have been a regulatory requirement since 1989.

With these considerations in mind, and before setting forth its approach on this issue, in the final rule, the Commission addresses two of the several points made by the commentors. First, in light of the many statements on "tying" the certification to the DOE site recommendation, the Commission notes that its initial selection of the submission of the site recommendation as the point for DOE and NRC to make their documentary material available was to pick a specific event to trigger the document availability requirements that would allow sufficient time for participants to review the material before the license application ^{DOE submitted} ~~was submitted~~. The time period provided in the Commission's current regulations for the review of documentary material is based on the DOE site recommendation to the President because the approximately ^{DOE to submit} ~~eight months~~ of time between that event and the date specified for ~~submission of the~~ ^{DOE} license application under the then extant DOE schedule for the repository, was viewed by the Commission as an appropriate amount of time for pre-application review of pertinent documents. By so providing the Commission did not intend to imply that the focus of the LSN was the review of the site recommendation. Second, as noted by several commentors, the original NRC rule on the "Licensing Support System" or "LSS"

X required DOE certification that it had complied with the document availability requirements no less than six months before ^(DOE submitted) ~~the submission of~~ the license application.

DELETE
OR
REVISE
TO
SUPPORT
SIX
MONTHS

However, the Supplementary Information to the original rule (54 FR 14935; April 14, 1989) also noted that the Commission anticipated that "LSS participants will have access to the LSS well before the license application is submitted." The term "well before" was not defined, but by implication, it was a time in advance of the six month certification of all backlog materials having been loaded that was required in the rule. Therefore, selecting the eight month period between the DOE site recommendation and the submission of the DOE license application as the expected time for participant review of information was not inconsistent with the Commission's intent in the original rule.

X The Commission agrees that tying availability and certification to ^(the date DOE submits) ~~submission of the~~ license application is a relatively simple and straightforward approach to this issue. The Commission does not entirely agree with the comments made by Nevada, NEI, and DOE on the need to eliminate the expense and time associated with making documents available when ^(certainty of an actual) ~~the~~ submission of the ^(repository) ~~license application~~ may be speculative. The NRC would not be acting prudently if it did not begin serious preparations for the review of a possible DOE license application. Thus substantial staff and financial resources have already been committed in preparing to process such an application. The Commission likewise believes that the parties and potential parties need to prepare for a possible proceeding. The Commission is mindful of the fact that there may be revisions to the DOE site design resulting from the Presidential and Congressional review process or new scientific information gathered during that period before any DOE application. However, the Commission is also aware that the development of the DOE license application and supporting materials is an ongoing process that, given the statutory

schedules and the potential complexity and scope of those materials, requires that some effort be expended before it is finally known whether an application will be ^{received} ~~submitted~~. The Commission believes that providing for an ^{six} ~~eight~~ month period of DOE documentary material availability before ^{DOE submits} ~~the license application is submitted~~ (which is the period that obtained under the DOE schedule that has been in effect for the past several years) continues to reflect an appropriate amount of pre-license application review time for participants to prepare for the licensing proceeding. The Commission thus has established the following framework on this issue in the final rule:

- DOE is required to make its documentary material available, and to provide an initial certification of compliance, no later than ^{six} ~~eight~~ months before ^{DOE submits} ~~the license application is submitted~~.
- NRC is required to make its documentary material available, and to provide an initial certification of compliance, thirty days after the DOE certification. Although the current regulations require NRC compliance at the same time as DOE compliance, under the ^{six} ~~eight~~ months before ^{DOE submits} ~~submission of the license application~~ approach in the final rule, the NRC, like other participants, will have no certainty as to when the DOE certification will be made until it actually happens. Therefore, to eliminate unnecessary ^{coordination} ~~effort~~, the NRC will be permitted to certify thirty days after the DOE certification. As explained in the next paragraph, other participants will have ninety days after the DOE certification before being required to make their documents available. Due to the fact that the NRC will have a substantial amount of documentary material, the Commission wants to ensure that the NRC material will be available as soon as practicable (i.e., thirty days) after the DOE certification.;

- The other participants will be required to make their documentary material available, and to provide an initial certification of compliance, ninety days after the DOE certification;
- NRC will not accept the DOE license application for docketing until at least ^{review} ~~eight~~ ^{six} months have passed ^{since} ~~between~~ the DOE certification of compliance and receipt of the application.

Regarding this requirement, the Commission notes that the pendency of a dispute contesting some aspect of the DOE initial certification would not be a reason to delay the NRC acceptance of the DOE license application.

Since DOE's certification of the availability of DOE documents

^(docketing review) ~~Receipt~~ ^{six} ~~eight~~ month ^{review time} ~~has~~ ^{have} passed will mitigate the need, as described in the Supplementary Information for the proposed rule, 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 DOE was unable to comply with the LSN rule.

This is because
~~On some related points,~~ the Commission interprets the requirement in section 114(d) of the Act that the Commission "shall issue a final decision approving or disapproving the issuance of a construction authorization not later than three years after the date of submission" of the license application, as three years from the docketing of the license application. This interpretation was reflected in the issuance of the original LSS rule (see e.g., 10 CFR 2.1001 - "Pre-license application phase"), and is codified in the HLW repository hearing schedule contained in Appendix D to 10 CFR Part 2. This interpretation is consistent with the Commission's general practice since its establishment in 1975 to tie hearing schedules to the docketing of a license application rather than its filing by the applicant, for the obvious reason that a license application may be substantially deficient in some material respect and must be

(new paragraph)

returned to the applicant for revision. The Commission is also deleting from the final rule the provision in proposed § 2.1009(c) that would have required DOE to report to the Pre-License Application Presiding Officer in the event that it could not make the initial certification when required. Under the framework in the proposed rule, there was a possibility that a delay in the initial certification by DOE could substantially affect the time provided for advance review of the documentary material. Reporting to the Presiding Officer on the status of the initial certification would have been necessary and appropriate under such circumstances. Under the framework in the final rule, ^{six} ~~eight~~ months of advance review will be provided because of the time limits on ^{acceptance for docketing} application ^{review of the} ~~submission~~ discussed above. Finally, the Commission is eliminating the provision in § 2.1009(b) of the current regulations that requires the responsible official for a participant to update at twelve month intervals the initial certification that the documentary material specified in § 2.1003 has been made available. Based on the framework in the final rule, as well as the repository schedule in the NWPA, it is unlikely that there will be a need for a twelve month update.

The Commission believes that it would be useful to emphasize two points regarding the availability of documentary material:

- (1) What constitutes "documentary material?"; and
- (2) When are documents created after the initial certification of compliance required to be made available?

The definition of documentary material in the current regulations includes three separate classes of material, and is guided by the Topical Guidelines in NRC Regulatory Guide 3.69. The three classes of documentary material are:

- (1) Any information on which a party, potential party, or interested governmental participant intends to rely and/or cite in support of its position in the HLW proceeding;
- (2) Any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information noted in item 1 or that party's position; and
- (3) All reports and studies prepared by or on behalf of the potential party, interested governmental participant, or party, including all related "circulated drafts" relevant to the license application or the issues set forth in the Topical Guidelines regardless of whether they will be relied upon or cited by a party.

Material in any of the three classes must be made available in the LSN. The three classes encompass a broad scope of material, as appropriate for an electronic information management system that was intended to provide document discovery rights similar to that normally available in NRC licensing proceedings.¹

¹As specified in § 2.1003, DOE and the other participants remain responsible for incorporating all their "documentary material" that meets the requirements of that definition in § 2.1001, including material that is relevant to, but does not support, DOE positions in the high-level waste repository proceeding, and any reports or studies relevant to the license application or the Topical Guideline issues in Regulatory Guide 3.69, regardless of whether they are cited and/or relied upon by a party. Because the LSN will be populated during the pre-application phase of the proceeding before there are any party "contentions" defining the matters in controversy, whether this section 2.1001 "documentary material" is "relevant" must

Documentary material created after the initial certification of compliance is expected to be made available reasonably contemporaneous with its creation, rather than stored for entry as a group at some point during the remaining time before ~~submission of~~ ^{DOE submits} the license application. X
This concept has been part of the regulatory framework since the original LSS rule was issued in 1989 (April 14, 1989; 54 FR 14925 at 14934) and is based on the need to provide participants with early and useful access to documentary material before ~~the license application is submitted~~ ^{DOE submits} X
As DOE noted in its comments on the proposed rule, new information will continue to be produced during the period before ~~the license application is submitted~~ ^{it submits} X. Participants must have timely access to this material in order to prepare for the licensing proceeding.²

III. The LSN Site Design

As was described in the proposed rule, the Commission intends to implement a design for the "central LSN site" that will ensure that the totality of the individual websites operate in an "efficient and effective" manner. The final design standards for individual participant LSN websites are fully consistent and supportive of the design for the central LSN site. To evaluate

necessarily be defined in terms of whether it (1) has any possible bearing on a party's supporting information or a party's position for which the party intends to provide supporting information; or (2) is a report or study that has a bearing on the license application or any of the Regulatory Guide 3.69 Topical Guideline issues. See Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 462 (1974).

²The adopted change in the compliance certification dates creates the possibility that there could be a significant period between the time the LSN central site becomes operational and the dates upon which DOE and other potential parties must provide certifications that their existing section 2.1003 documentary material is accessible. The required certification dates notwithstanding, the Commission strongly recommends that all those who are parties or potential parties to the HLW repository proceeding make every effort to provide access to as much of their existing section 2.1003 documentary material as soon as possible after the LSN central site is operational. Providing such pre-certification access can only inure to the benefit of both the LSN central site's operator and users in terms of maximizing the LSN's efficiency and effectiveness.

the alternative designs for the central LSN site, the Technical Working Group of the LSNARP identified and characterized five design alternatives for review by the full Advisory Panel. These alternatives were then reviewed by the full LSNARP. The LSN Administrator then evaluated the recommendations of the Advisory Review Panel in preparing a Capital Planning and Investment Control (CPIC) Business Case Analysis for review by the NRC Information Technology Business Council. Two of the alternatives identified by the Technical Working Group, Alternatives 2 and 4, were not included in this analysis because no members of the LSNARP supported these alternatives. The CPIC and the recommendations of the Information Technology Business Council were then reviewed by the former NRC Executive Council.

In the Business Case Analysis, the LSN Administrator recommended the selection of the alternative originally identified as "Alternative 3" (Design Option 2 in the Regulatory Analysis) in the report of the LSNARP Technical Working Group. The Administrator's recommendation was supported by the Information Technology Business Council and the former NRC Executive Council. A summary comparison of the alternative designs is included in the Regulatory Analysis for this rule. The entire Business Case Analysis

(with budgetary data redacted) is available from the LSN Administrator. ~~Contact Dan Graser,~~
~~U.S. Nuclear Regulatory Commission, Washington D.C. 20555-0001, telephone (301) 415-7401,~~
~~email dig2@nrc.gov.~~

as indicated above in this notice.

[also see pg 17]

The recommended design is an LSN home page/website based on portal software technology. Web portals include hardware and software capable of: indexing all bibliographic data and text documents on a web server; establishing a baseline; and then routinely revisiting those servers to compare new findings against the previous baseline. The single LSN web page standardizes search and retrieval across all collections by providing a common user search

via the NRC website in ADAMS at accession number ML00372758
or

This revision identifies standard data exchange protocols commonly used in the Internet environment to help ensure data exchange and usability.

2. The Role of the LSN Administrator

The role of the LSN Administrator under the current regulations 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 rule, the Commission believes that the LSN Administrator should have additional responsibilities. Section 2.1011(c)(6) of the final rule gives 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 or problems identified during initial operability testing of the individual participant LSN websites or the "central LSN site." Section 2.1011(c)(7) gives the Administrator 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 regulations.

Sections 2.1011(c)(3) and (c)(4) of the current regulations gives the Administrator the responsibility to "coordinate the resolution of problems" regarding "LSN availability" and the "integrity of documentary material", respectively. To be more explicit regarding the Administrator's responsibilities, the Commission is amending 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 concerning LSN availability (§ 2.1011(c)(3)), or the integrity of documentary material (§ 2.1011(c)(4)). The LSN Administrator will also report these problems and recommended resolutions to the Pre-License

Application Presiding Officer provided for in § 2.1010 of the final rule. 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.

3. The Timing of Participant Compliance Determinations

Under § 2.1003(a) of the current regulations, DOE and NRC are required to make their documentary material available beginning thirty days after DOE's submission of its site recommendation to the President; other participants no later than thirty days after the date that the repository site selection decision becomes final after review by Congress. In addition, § 2.1009 of the current regulations requires each potential party, interested governmental participant, or party to certify to the Pre-License Application Presiding Officer that the documentary material specified in § 2.1003 has been identified and made electronically available. However, the current regulations do not specify when the initial certification must be made. Although the Commission did not propose a change to the § 2.1003(a) requirement on when documentary material must be made available, the Commission did propose a revision to § 2.1009 to clarify that the initial participant certification of compliance ("initial certification") must be made at the time that each participant's documentary material is made available under § 2.1003.

Based on an evaluation of the comments submitted on this issue in response to the proposed rule, the Commission is adopting the following amendments to the documentary availability and certification requirements of the rule:

X (1) Section 2.1003(a) is amended to require DOE to make its documentary material available at least ^{SIX}~~eight~~ months before it submits the license application for the HLW repository. NRC shall make its documentary material available thirty days after the DOE initial certification of compliance under § 2.1009. Each other potential party, interested governmental participant

or party shall make ^{its} ~~their~~ documentary material available ninety days after the DOE initial certification of compliance under § 2.1009. X

(2) Section 2.1009 is amended to clarify that the initial participant certification of compliance ("initial certification") must be made at the time that each participant's documentary material is made available under § 2.1003.

Section 2.1012(a) has been amended to specify that the Director of the NRC's Office of Nuclear Material Safety and Safeguards may ~~not~~ ^{review until} determine that the license application is ~~not~~ ^{since} acceptable for docketing ~~unless a period of eight months has elapsed between the DOE initial certification under § 2.1009 and the submission of the application~~ ^{six} X

In addition, the Commission is adopting the following related amendments to the rule:

(1) In § 2.1001 the definition of "Pre-License Application Phase" has been revised to note that the pre-license application phase is the period of time before the license application for the HLW repository is docketed.

(2) Section 2.1003(a)(2) has been amended to clarify that a bibliographic header is required for graphic-oriented material.

(3) Section 2.1010(b) has been amended to specify that the Pre-License Application Presiding Officer may be designated at any point in time during the pre-license application phase that the Commission finds appropriate, but in any event no later than fifteen days after the date of ~~submission of~~ the DOE initial certification under § 2.1009. X

(4) The definition of "Bibliographic Header" in § 2.1001 has been revised to delete references to a "full header." In addition, the definition of "Full Header" in § 2.1001 has been deleted. The "full header" concept was originally part of the implementation framework for the original LSS rule but no longer has any viability under the present framework.

(5) The reference in § 2.1003(a)(2)(xv) to "paragraph (b)(1)" has been revised to read "in this paragraph". There is no paragraph (b)(1) in § 2.1003.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This final rule establishes basic design standards that participant LSN websites must use to participate in the LSN. The standards in the final rule are based on World Wide Web Consortium (W3) standards, and/or the International Standards Organization (ISO) standards and are not government-unique standards.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

The final rule does not contain information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The following regulatory analysis identifies several alternatives ("regulatory options") to the Commission's required design standards for the design of individual participant websites. It

2. In § 2.1001, the definition of "Full header" has been removed and the definitions of "Bibliographic header" and "Pre-license application phase" are revised to read as follows:

§ 2.1001 Definitions.

"Bibliographic header" means the minimum series of descriptive fields that a potential party, interested governmental participant, or party must submit with a document or other material.

* * * * *

"Pre-license application phase" means the time period before the license application to receive and possess high-level radioactive waste at a geologic repository operations area is docketed under § 2.101(f)(3).

* * * * *

3. In § 2.1003, the introductory text of paragraphs (a) and (a)(2), and paragraph (a)(2)(xv) are revised to read as follows:

§ 2.1003 Availability of material.

(a) Subject to the exclusions in § 2.1005 and paragraphs (b) and (c) of this section, DOE shall make available, no later than ~~eight~~^{six} months in advance of submitting its license application X to receive and possess high-level radioactive waste at a geologic repository operations area, the NRC shall make available no later than thirty days after the DOE certification of compliance under § 2.1009(b), and each other potential party, interested governmental participant or party shall make available no later than ninety days after the DOE certification of compliance under Section 2.1009(b)--

* * * * *

(2) In electronic image format, subject to the claims of privilege in §2.1006, graphic-oriented documentary material that includes raw data, computer runs, computer programs and

codes, field notes, laboratory notes, maps, diagrams and photographs, which have been printed, scripted, or hand written. Text embedded within these documents need not be separately entered in searchable full text. A bibliographic header must be provided for all graphic-oriented documentary material. Graphic-oriented documents may include-

* * * * *

(xv) Descriptive material related to the information identified in this paragraph.

* * * * *

4. In § 2.1009, paragraph (b) is revised to read as follows:

§ 2.1009 Procedures.

* * * * *

(b) The responsible official designated under paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. The initial certification must be made at the time the participant is required to comply with § 2.1003. The responsible official for the DOE shall also update this certification at the time ^{DOE submits} ~~of submission of~~ the license application.

5. In § 2.1010, paragraph (a)(2) is revised to read as follows:

§ 2.1010 Pre-License Application Presiding Officer.

(a) * * *

(2) The Pre-License Application Presiding Officer shall be designated at such time during the pre-license application phase as the Commission finds it appropriate, but in any event no later than fifteen days after the DOE certification of initial compliance under § 2.1009(b).

(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 (Multipurpose Internet Mail Extensions) per [<http://www.faqs.org/rfcs/rfc2045.html>] to accommodate multipurpose e-mail.

(c) * * *

(3) Identify any problems experienced by participants regarding LSN availability, including the availability of individual participant's data, and provide a recommendation to resolve any such problems to the participant(s) and the Pre-License Application Presiding Officer relative to the resolution of any disputes regarding LSN availability, including disputes on the availability of an individual participant's data;

(4) Identify any problems regarding the integrity of documentary material certified in accordance with § 2.1009(b) by the participants to be in the LSN, and provide a recommendation to resolve any such problems to the participant(s) and the Pre-License Application Presiding Officer relative to the resolution of any disputes regarding the integrity of documentary material;

* * * * *

(6) Evaluate LSN participant compliance with the basic design standards in paragraph (b)(2) of this section, and provide for individual variances from the design standards to accommodate changes in technology or problems identified during initial operability testing of the individual documentary collection websites or the "central LSN site".

(7) Issue guidance for LSN participants on how best to comply with the design standards in paragraph (b)(2) of this section.

* * * * *

7. In § 2.1012, paragraph (a) is revised to read as follows:

§ 2.1012 Compliance.

(a) In addition to the requirements of § 2.101(f), the Director of the NRC's Office of Nuclear Material Safety and Safeguards may determine that the tendered application is not acceptable for docketing ^{review} ~~under this subpart~~ ^(until) ~~at least eight~~ ^{six} months have ^{since} ~~not elapsed between~~ the DOE initial certification of compliance under § 2.1009(b) ~~and submission of the application~~ if the application is not accompanied by an updated certification pursuant to § 2.1009(b), or if the Secretary of the Commission determines that the application cannot be effectively accessed through the Commission's electronic docket system.

* * * * *

Dated at Rockville, Maryland, this ____ day of May 2001.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

The Director may determine that the tendered application is not acceptable for docketing under this subpart

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

SUBJECT: **SECY-01-0039 - FINAL RULE TO AMEND 10 CFR PART 2, SUBPART J, IN REGARD TO THE LICENSING SUPPORT NETWORK**

Approved x Disapproved Abstain

Not Participating

COMMENTS:

See attached comments.


SIGNATURE

April 2, 2001

DATE

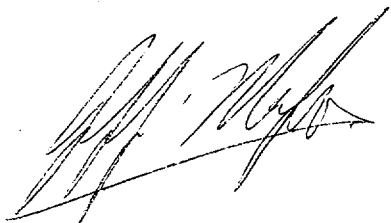
Entered on "STARS" Yes ✓ No

COMMISSIONER MERRIFIELD'S VOTE ON SECY-01-0039

I approve the staff's recommendations for final amendments to the Commission's rules of Practice applicable to the use of the Licensing Support Network (LSN) subject to the following comments. First, I agree with the recommendations of the Department of Energy (DOE), the Nuclear Energy Institute (NEI) and the State of Nevada that 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 (NWP) § 114(b). Second, I agree with DOE's and NEI's recommendations and Nevada's suggested example that the rule require DOE's documents to be made available six months before DOE must submit its application pursuant to NWP § 114(b). If there is a proceeding on Yucca Mountain, these entities will have significant stake in its outcome, and will represent a diverse group of stakeholder interests. In such a controversial matter it is not often that the would-be applicant, the industry, and a large public stakeholder agree on a matter. There is no compelling reason I am aware of to disagree with their recommendations.

Third, the Federal Register notice, including the mark up of the final rule, 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 submission of its application to the NRC pursuant to NWP § 114(b). The second use of the phrase refers to the triggering date for the start of the adjudicatory proceeding pursuant to NWP § 114(d). Obviously, this is very confusing. The Federal Register must be revised throughout to indicate whenever the timing of an activity is linked to "submission of the application," whether the submission is in accordance with NWP § 114(b), or NWP § 114(d). Otherwise, it will be very difficult for parties to the proceeding to understand the timing of certain activities. Similarly, 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 NWP § 114(b) does not attempt to interpret, nor does it affect DOE's submission requirement pursuant to section 114(d).

Similarly, 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. DOE's comments on the final rule, regarding its preference for the timing of making its documents publicly available, implies that DOE agrees that LSN deadline is reasonable and that it will not interfere with DOE's ability to meet its statutory obligations under the NWP.



4/2/01