



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

November 4, 1996

MEMORANDUM TO: Chairman Jackson
Commissioner Rogers
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan

FROM: James M. Taylor *[Signature]*
Executive Director for Operations

SUBJECT: LICENSING SUPPORT SYSTEM

In SECY-96-178, the staff advised the Commission of issues pertaining to the Licensing Support System and its proposed use in the Department of Energy's license application for a high level radioactive waste repository. Due to advances in technology that have occurred since the LSS concept was developed, the staff recognized the need to reexamine the foundations and assumptions upon which the 10 CFR 2, Subpart J (the LSS rule) is based. A series of strategies were proposed to resolve outstanding issues involving the rule in light of advances in computer technology while reflecting the current status of repository licensing activities.

In a Staff Requirements Memorandum dated October 8, 1996, the Commission approved all components of the proposed strategy. In addition, the Commission indicated:

The staff should provide estimates of the resources needed, and describe any reprioritization impacts associated with those resources, to complete the consensual process (p. 9) in the six-month time frame noted in the staff response to Commissioner Diaz's questions.

As described in SECY-96-178, the staff intends to conduct an electronic discussion with the LSS Advisory Review Panel to identify issues related to the future direction of the LSS. This discussion will use many of the tools and processes developed for NRC's Rulenet. The staff originally expected to have completed this effort by October 15, 1996. However, the Commission's response to SECY-96-178 and subsequent discussions among the members of the LSS Senior Management Team have expanded the scope of this initiative.

The staff now expects this process to run for approximately six months. A proposed *Federal Register Notice* describing the operation is provided as Attachment 1 to this memorandum. No NRC procurements are anticipated during this time. However, limited NRC staff and National Laboratory resources are anticipated as indicated in Attachment 2. Due to the limited resource requirements, and the distribution of effort across several NRC organizations, no staff reprioritization is anticipated to complete the proposed consensual process.

The dialogue promoted through the consensual process is not intended to supplant formal comments on any proposed rule that may eventually be developed. Rather, it is intended to provide additional opportunities for those interested in LSS rulemaking issues to provide input to agency personnel before the agency has developed text on which formal written comments are required to be filed. This can mean better informed, focused, and influential comments. Likewise, the ability of these commenters to interact among themselves before comments are filed means that misunderstandings and miscommunications can be corrected in a timely way.

Should results of the consensual process indicate that changes to 10 CFR 2, Subpart J are appropriate, a formal rulemaking will be initiated.

If you have any questions regarding this status report or the technical approach proposed by the staff, Arnold E. Levin, Licensing Support System Administrator, is available at 415-7458.

Attachments:
As stated

The Commissioners

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OFFICE	OC	SECY	EDO:DEDS	EDO	
NAME	RMScroggins	JCHoxley	HLThompson, Jr.	JMTaylor	
DATE	10/27/96	10/11/96	10/ /96	10/ /96	
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[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

LSSNet Communication Program; Licensing Support System
Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: LSSNet Program: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of a computer-based communications program called "LSSNet" to maximize the interaction between the NRC, the LSS Advisory Review Panel, and the public on rulemaking issues related to the Licensing Support System (LSS). The LSS is an electronic information management system established in 10 CFR Part 2, Subpart J, of the Commission's regulations, designed to support the licensing proceeding for the national high-level waste repository. The LSS has not yet been developed. Many features of the rule first adopted in 1988 no longer provide optimal approaches to electronic information management. This topic was a primary discussion item at the May 3, 1996, meeting of the LSS Advisory Review Panel. LSSNet will allow the LSS

Advisory Review Panel (LSSARP), other potential users of the LSS, and the public to communicate both with the NRC and among themselves, with a view toward defining LSS rulemaking issues, identifying alternatives to address those issues, and determining the extent of agreement on those alternatives.

DATE: The public can access the LSSNet site beginning November 1, 1996. LSSNet will run from November 15, 1996 through May 15, 1997.

ADDRESSES: The LSSNet World Wide Web site may be accessed with the Uniform Resource Locator <http://lssnet.llnl.gov>.

FOR FURTHER INFORMATION CONTACT: John C. Voglewede, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7415.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission is undertaking a project designed to use state-of-the-art computer technology to maximize interaction between the NRC, its LSS Advisory Review Panel (LSSARP), and the public on the issue of the integration of new computer technologies into the Licensing Support System (LSS). The LSS is an electronic information management system and was incorporated in the Commission's Rules of Practice at 10 CFR Part

2 Subpart J. The current project, called LSSNet, is intended to serve not only to provide the NRC and the public with valuable information, but also to maximize the usefulness of computer-based communications as a tool in the rulemaking process. LSSNet is intended to maximize the interaction between the NRC, the LSSARP, and the public on rulemaking issues related to the LSS. The LSSARP was chartered under the Federal Advisory Committee Act to advise the NRC on the design, development, and use of the LSS. LSSNet will allow the LSSARP, other potential users of the LSS, and the public to communicate both with the NRC and among themselves, with a view toward defining LSS rulemaking issues, identifying alternatives to address those issues, and determining the extent of agreement on those alternatives.

LSSNet builds on a pilot program, called RuleNet, which the Commission used to demonstrate the feasibility of increasing the interaction between the public and the NRC on the discussion of rulemaking issues through electronic communication technology (see SECY-96-188). Before the initiation of the RuleNet pilot program, the NRC had already introduced significant innovations in the area of rulemaking: through the concept of "enhanced participatory rulemaking," designed to promote early public comment and interaction on rulemaking issues before a proposed rule is developed; through the use of Negotiated Rulemaking as provided in the Negotiated Rulemaking Act of 1988; and through electronic bulletin boards, which allow comments on a proposed rule to be submitted electronically. RuleNet represented a

further step toward melding early public comment and interaction, as in the enhanced participatory rulemaking, together with communications technology, developed specially for this purpose, to permit participants to deal with one another and with the NRC by computer.

The potential for computer technology to improve the current rulemaking process can be readily illustrated. In a traditional rulemaking, if a particular matter raises questions in the minds of participants, they have no recourse other than to point out the issue in their written comments. If the rulemaking is on a proposed rule, the commenter may not learn the answer to the question until the final rule is issued. The computer, however, allows the agency staff to analyze the comments and questions received, ascertain which questions arise most often, and then post electronically a list of "Frequently Asked Questions" and their answers. In this way, doubtful points can be clarified before, not after, comments are filed.

The dialogue promoted through the LSSNet is not intended to supplant formal comments on any proposed rule that may eventually be developed from the LSSNet process. Rather, LSSNet is intended to provide additional opportunities for those interested in LSS rulemaking issues to provide input to agency personnel before the agency has developed text on which formal written comments are required to be filed. This can mean better informed, focused, and influential comments. Likewise, the ability of these

commenters to interact among themselves before comments are filed means that misunderstandings and miscommunications can be corrected in a timely way. However, because the electronic communications will contribute to the information base used by the agency in the rulemaking process, a copy of these communications will be placed in the rulemaking record.

To facilitate the exchange of views, LSSNet provides discussion areas, designed to encourage dialogue among subgroups of participants. These discussion areas will allow participants of similar viewpoints to join together to discuss an issue to maximize their effectiveness. Discussion areas could also be used to allow a specific issue to be placed before all participants for highly focused consideration. In this way, a particular topic can be considered in detail, the strengths and weaknesses of conflicting positions can be analyzed, and the possibilities of a compromise resolution can be explored. Dialogue may take place either separate from the discussion areas provided in LSSNet by the private interaction of participants, or through the LSSNet discussion areas .

Assistance to the participants will be provided by facilitators who will perform a variety of functions: helping to categorize comments on LSS issues; helping to maximize the usefulness of the electronic communications process; and providing assistance to facilitate on-line and offline discussions, including helping participants to articulate and

refine their positions on issues. The facilitators' role will simply be to contribute to the smooth and productive functioning of the process.

Phases of the LSSNet Process

As a preliminary step, necessary to allow meaningful participation in the LSSNet process, the NRC is making relevant information on the LSS available to all who can use it: that is, both potential participants and those who want only to observe the process. Toward this end, the agency has made some basic documents pertaining to the LSS available through LSSNet in full text form.

In the first phase of the process, which will comprise approximately 10 days, the NRC will solicit comment on the challenges and issues identified by the staff and posted under the heading of "Discussion Topics" in the LSSNet FORUM. Participants will be permitted to suggest other "Topics". The NRC staff will review the comments/"Topics" posted during the first phase and use them to fashion a number of alternative solutions to the LSS rulemaking issues. During the second phase, participants will have an opportunity to comment on these alternative approaches or to suggest other alternative solutions but no new "Topics" will be solicited. After the second phase, the NRC staff will consolidate and synthesize the challenges and the proposed solutions, using them to develop more concrete

proposals to the rulemaking issues, including draft rulemaking text if practicable, which will be posted electronically. During the third phase, the participants will then respond to the proposals the staff identified. As before, there will be the opportunity for participants to discuss either within the electronic rulemaking or outside of it. The staff will use the results of the LSSNet interactions in Phase 3 to develop a draft proposed rule which will be submitted to the Commission for review and approval.

Terms of Participation

LSSNet is primarily intended as a forum through which the LSS Advisory Review Panel can advise the Commission on how best to integrate changes in technology into the framework of the LSS. Consequently, the electronic Forum will be reserved for the use of members of the LSSARP and their representatives. As would be the case with face to face meetings, the NRC will ensure compliance with the relevant provisions of the Federal Advisory Committee Act with respect to consensus documents. Thus, where consensus is requested, votes of FACA committee members will be cast and recorded. In keeping with the openness provisions of FACA, interested members of the public will be able to observe the dialogue between the LSSARP and the Commission, and will also be able to post comments on the public segment of LSSNet. The NRC staff will fully consider both LSSARP comments and public

comments in refining the rulemaking issues for Commission consideration.

The NRC fully expects that all participants will recognize that certain norms of civility will be observed. (In the event that a participant's conduct was such as to warrant his or her severance from the electronic dialogue, the option of submitting paper comments would remain, but it seems unlikely that this issue would ever arise.)

LSS Rulemaking Issues

The LSS concept grew out of the Commission's concern regarding how best to review the DOE license application for a high-level radioactive waste (HLW) repository. A centralized, electronic database accessible by all parties appeared to offer the opportunity for significant time savings in conducting the licensing proceeding for the repository and, simultaneously, for the enhancement of any party's opportunity for effective participation. Plans for the LSS were first initiated in 1986 and were based on computer technology available in that time frame. It was intended to provide a central, shared, federally funded database of licensing information beginning in 1995. Budgetary shortfalls, however, and the unanticipated length of time that it has taken to develop the licensing application for the repository, not only delayed the development of the LSS, but also resulted in the accumulation of a tremendous amount of

potential licensing information, much of which may no longer be relevant to a licensing proceeding which may not begin until about 2002. In addition, since document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture ALL relevant material in the LSS is substantially larger than originally assumed. While the development of the LSS remained stalled, the state of technology in document automation and retrieval overtook the technology of 1986 on which the original LSS was to be based. With the widespread and common place use of computers to generate and maintain the documents of a party to the HLW licensing proceeding, the universal availability of the Internet to tie disparate and geographically dispersed systems together, and the availability of commercially available software applications relevant to LSS functionalities, the centralized LSS envisioned at the time the LSS rule was developed may be obsolete. Consequently, the Commission intends to evaluate how these new technologies can be integrated into the LSS rule while still maintaining the primary functions of the LSS: (1) a mechanism for the discovery of documents before the license application is filed; (2) electronic transmission of filings by the parties during the proceeding; (3) electronic transmission of orders and decisions related to the proceeding; and (4) access to an electronic version of the docket. It is the intent of the NRC staff to focus this rulemaking on how best to address changes in technology in regard to the LSS. There is no intent to re-visit the basic functionalities of the LSS that are reflected in the

current 10 CFR Part 2, Subpart J or the conditions of the negotiated rulemaking.

To attempt to address these issues, the NRC is posting the following "topics" to guide the discussion during the first phase of LSSNet:

- o What are the costs and benefits of moving from a dedicated, centralized system to a distributed system based on the Internet?
- o How should other improvements in computer technology be incorporated into the LSS?
- o What provisions of the LSS rule will need to be changed to reflect the incorporation of new technologies?
- o How should the backlog of "uncaptured", and possibly irrelevant, repository-related information be addressed?
- o What would the role of the LSS Administrator be under a distributed system?
- o How should advice from potential users of the LSS be provided for?

Dated at Rockville, Maryland, this day of , 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission

RESOURCE ESTIMATES FOR ADVANCE NOTICE OF PROPOSED RULEMAKING

10 CFR 2 SUBPART J

(For a six-month period between November 1996 and May 1997)

OFFICE	STAFF RESOURCES	FUNDING
IRM	400 hrs	\$15K*
NMSS	200 hrs	OK
OGC	400 hrs	OK
SECY	100 hrs	OK
Other (ASLBP, RES)	30 hrs	OK
TOTAL	1130 hrs	\$15K

* Fiscal Year 1996 funding