



## Department of Energy

Washington, DC 20585

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Rules and Directives Branch  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-01

Subject: Comments on Draft Regulatory Guide DG-3022, Revision 1 of Regulatory Guide 3.69,  
Topical Guidelines for the Licensing Support Network

Dear Mr. Lesar:

The U.S. Department of Energy (DOE) provides the following comments in response to the U.S. Nuclear Regulatory Commission (NRC) notice requesting public comments on Draft Regulatory Guide DG-3022 (Draft Regulatory Guide), Proposed Revision 1 of Regulatory Guide 3.69, Topical Guidelines for the Licensing Support Network (LSN), issued in June 2002.

We note that the Draft Regulatory Guide is structured similarly to the previous version of the Regulatory Guide, and that such continuity in NRC guidance is useful to DOE and other potential parties in defining the scope of documentary material to be submitted to the LSN under 10 C.F.R. Part 2, Subpart J. DOE agrees with the general approach reflected in the Draft Regulatory Guide of defining the scope of documentary material to be included in the LSN based on the content of a license application as provided in 10 C.F.R. 63.21, and with licensing information specified in the draft NUREG-1804, the Yucca Mountain Review Plan.

We offer the following comments to further clarify the purposes and uses of the Draft Regulatory Guide. Our comments are organized in accordance with the section titles of the Draft Regulatory Guide.

### Section A, Introduction

The last sentence of the first paragraph of Section A states that the LSN is being designed and implemented to provide for entry of and access to "potentially" relevant licensing information. We suggest deletion of the term "potentially". Although previously used in conjunction with the Licensing Support System, the term "potentially" is not used in the current LSN definition of documentary material in 10 C.F.R. Part 2.1001.



## Section B, Discussion

The first sentence of the second subsection of Section B, "*Use of the Regulatory Guide*," should be modified to add the term "draft" before the reference to the Yucca Mountain Review Plan to more accurately represent the current status of the YMRP.

For clarity and consistency, the third sentence of the second paragraph of the second subsection should be modified (modifications in italics) to read "*[t]ypes of documents not included in Appendix A should also be included in the LSN if they are relevant to a topic in Section C of this regulatory guide.*"

The fourth paragraph of the second subsection addresses information to be included for a geologic repository environmental impact statement. In that regard, the last sentence states that "[o]nly information on transportation of high-level waste from a reactor, from an independent spent fuel storage facility, or from a monitored retrievable storage facility to a repository should be included under the transportation topical guideline." It is not clear from this statement what information is meant to be included in the LSN. DOE requests further clarification of this statement and guidance from NRC on the type of information to be included in the LSN with respect to transportation of high-level waste and spent nuclear fuel to a repository at Yucca Mountain. Such clarification would be useful, particularly with respect to interpreting the guidance in sub-bullet 3.6 of Section C of the Regulatory Guide that identifies environmental impacts from transportation as a topic of information to be included in the LSN.

## Section C, Topical Guidelines

Sections 1 and 2 of Section C appear to mirror the table of contents of the current draft Yucca Mountain Review Plan. However, given the draft status of the YMRP and an earlier statement in the regulatory guide that the topical guidelines have been kept broad and at a fairly high level (see Section B, Discussion), DOE recommends that the more detailed subcategories (e.g., subcategories 2.1.1.5.1 and 2.2.1.3.1) be deleted. Deleting many of the subcategories will not detract from the scope of the topics to be included in LSN, since the regulatory guide makes clear that "the user should consider each topic to be inclusive rather than exclusive with regard to documents germane to that topic . . .". In addition, maintaining the topical guidelines at a high level provides flexibility to all parties or potential parties to the proceeding to include documents in a broad sense, and not be constrained by detailed sub-topics that may change in the final YMRP.

Similarly, Section 3 appears to mirror the table of contents of DOE's Final Environmental Impact Statement for a Yucca Mountain repository, including several subcategories of information. DOE believes here, too, that many of the subcategories can and should be deleted without impacting the scope or topics of documentary material to be included in the LSN.

## Appendix A, Types of Documents to be Included in the Licensing Support Network

Appendix A provides examples of the types of documents that should be included in the LSN. The first example is technical reports and analyses. This example mirrors the current definition

of "documentary material" in 10 C.F.R. 2.1001, which provides that documentary material means, among other things, "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 both the license application and the issues set forth in the Topical Guidelines in Regulatory Guide 3.69 . . .". It is noted in Appendix A that only final technical reports would be included, and that preliminary drafts (including predecisional and other internal review drafts) other than "circulated drafts" would not be included. A "circulated draft" is defined in 10 C.F.R. Part 2, Subpart J as a "nonfinal document circulated for supervisory concurrence or signature in which the original author or others in the concurrence process have non-concurred". Reading the definition of "documentary material" in 10 C.F.R. 2.1001 together with item 1 of Appendix A, we interpret this to mean that the requirement to include circulated drafts in the LSN applies only to circulated drafts related to technical reports and analyses. The regulatory guide should confirm this interpretation explicitly. We note that Appendix A is particularly confusing in this regard as it includes in item 6 "[d]raft documents circulated for supervisor concurrence or signature on which a nonconcurrence has been registered," which is broader than both item 1 and the reference to "circulated drafts" in the definition of "documentary material".

Several other items in Appendix A would benefit from further clarification. Specifically, items designated 8.12 and 8.13 indicate that public and agency comments on documents and responses to comments are to be included in the LSN. We interpret these items to be specific to those public and agency comments received by DOE in response to a DOE request for comments, for example, comments on the draft Yucca Mountain Environmental Impact Statement or the Secretary's consideration of site recommendation. In addition, items designated 8.16 and 8.17 indicate that DOE project decision schedules and program-management documents are to be included in the LSN. The description of these types of documents is not specific or clear, and therefore further clarification is appropriate to assist in identifying the documents that should be included in the LSN.

## General Comments

1. While the definition of "documentary material" in 10 C.F.R. 2.1001 uses the term "relevant," that term is not defined in the Draft Regulatory Guide. Clarification of the term "relevant" would be beneficial to all parties. We are aware that the NRC's general practice is to follow the Federal Rules of Civil Procedure. We recommend that the term "relevant" be interpreted in light of Rule 26 of the Federal Rules of Civil Procedure and case law interpreting it.
2. Since September 11, 2001, Federal agencies have been directed to identify and protect sensitive information that could be used to target facilities for possible terrorist activity. In accordance with this direction, the DOE has removed certain information from its websites and other public venues, which could aid in targeting DOE facilities.

10 C.F.R. 2.1003(a)(4)(iii) allows safeguards information to be placed in the LSN by header only, and 10 CFR 2.790 provides for exempting and withholding certain information from licensing proceedings. These provisions will not cover all potentially sensitive information, such as the type of information noted above. Accordingly, the

NRC should provide additional guidance on how potentially sensitive documents are to be handled in the LSN. This would be particularly useful with respect to threat evaluations and other homeland security documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Margaret S. Y. Chu', with a long horizontal flourish extending to the right.

Dr. Margaret S. Y. Chu, Director  
Office of Civilian Radioactive  
Waste Management

cc:

J. Schlueter, NRC

J. Ciocco, NRC

D. Graser, ASLB

M. Vander Puy, YMP-OPS