

February 4, 2005

The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am pleased to respond to your letter dated January 13, 2005, requesting information relating to NRC's implementation of the data quality guidelines and procedures required by Section 515 of the Treasury and General Government Appropriations Act for Fiscal 2001, (the Data Quality Act). NRC's response to your request is enclosed.

Sincerely,

***/RA/***

Nils J. Diaz

Enclosure: As stated

cc: Representative John Dingell

**Response To Letter Dated January 13, 2005 from  
Joe Barton, Chairman, Committee on Energy and Commerce  
relating to  
NRC implementation of the Data Quality Act**

1. Please provide a copy of your agency's procedures and rules relating to compliance with the DQA and the February 2002 OMB guidelines implementing the DQA, including, but not limited to, (a) a detailed narrative explanation of your agency's data-quality guidelines, agency procedures for implementing the guidelines, and the scope and applicability of the guidelines; and (b) the specific rationale behind any decisions or definitions limiting the scope of the information covered by these guidelines, including, but not limited to, the rationale behind exempting certain categories or types of public information from coverage, particularly information associated with rulemaking or any adjudicative process, and information the agency has determined it will exempt on a case-by-case or discretionary basis.

Response

- (a) The NRC Information Quality Guidelines address the scope of information covered by the guidelines including the applicability of the guidelines to proposed rulemaking and other public comment processes, procedures for the waiver of standards under urgent conditions, NRC quality standards, and NRC's administrative process for the public to seek correction of information. NRC procedures for implementing the guidelines are contained in the following documents:

NRC Information Quality Guidelines, 67 FR 61695, October 1, 2002  
(Attachment 1)

Memorandum dated August 16, 2002, to Office Directors and Regional Administrators from Stuart Reiter, Chief Information Officer, Subject: "NRC Information Quality Guidelines" (Attachment 2)

Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR-0058, Rev 4 (Attachment 3)

"Regulatory Analysis Technical Evaluation Handbook,"  
NUREG/BR -0184 (Attachment 4)

- (b) The scope of NRC Information Quality Guidelines is based on the Office of Management and Budget government-wide Information Quality Guidelines. For example, neither OMB's nor NRC's Guidelines apply to information being considered in adjudication (see section V.8 of OMB's Guidelines).

Enclosure

2. Identify the offices, job titles, and names of individuals responsible for devising and implementing the guidelines and for oversight of agency activity with regard to the DQA.

Response

Jacqueline E. Silber  
Chief Information Officer

3. Describe current agency efforts for ensuring and maximizing the quality of information it disseminates, including, but not limited to, (a) an explanation of the agency's basic standard of quality as a performance goal and the measures, indicators, or assessments used to determine if the goal is being met; and (b) the procedures for review of information before it is disseminated to ensure it meets the agency's quality standards and to prevent the release of poor-quality or questionable data, including, but not limited to, a description of your agency's peer-review process for scientific information that the agency may disseminate, and the mechanisms for transparency in the peer-review process.

Response

The NRC uses three standards to ensure the quality of information it disseminates: utility, integrity, and objectivity. The following procedures are set forth in the NRC Information Quality Guidelines:

Utility is the usefulness of the information to its intended users. To ensure information utility, the NRC will:

- Adhere to NRC policy on the dissemination of information to the public, which clearly specifies what is to be made available to the public and when it should be available for public release.
- Make information associated with the agency regulatory processes and decisions public, unless release is restricted because, for example, a given regulatory process or decision contains classified national security information, safeguards information, proprietary information, sensitive homeland security information, or other information that is protected from disclosure under the Freedom of Information Act.
- Use feedback mechanisms at the NRC's Web site to request public comments on what information the NRC disseminates and how it is disseminated.
- Request public comments on individual documents and hold public meetings, as appropriate, to solicit public comments.
- Assist the public in quickly and conveniently locating the information they are seeking through the NRC's Public Document Room or the Web site.

Integrity is the security of information from unauthorized access or revision to ensure that the information is not compromised through corruption or falsification. To ensure information integrity, the NRC will adhere to agency policies for personnel security, computer security, information security, and records management, which include the following key components:

- Systems development and life cycle management policies require that computer systems must be designed and tested to prevent inadvertent or deliberate alteration and to ensure appropriate access controls.
- Computer and personnel security policies ensure that employees and contractors who have access to electronic information and associated computer systems are screened for trustworthiness and assigned the appropriate level of access.
- Records management policies require that agency records must be properly maintained and protected. In particular, the NRC's electronic records management system (i.e., Agencywide Documents Access and Management System, (ADAMS)) is designed to ensure that documents that are disseminated to the public are protected from alteration or falsification.

Objectivity involves two distinct elements, including presentation and substance. Information must be presented in a manner that is accurate, clear, complete, and unbiased. In addition, the substance of the information presented must be accurate, reliable, and unbiased. To ensure information objectivity, the NRC will:

- Achieve accuracy and completeness in the following ways:
  - Formal review of and concurrence with all information disseminated, including rulemaking documents, inspection reports, technical reports, generic communications, and all other agency documents covered by these guidelines.
  - Peer review of NRC research products. The primary objective of the peer review is to judge the technical adequacy of the research and to bring the widest and best knowledge to bear on the quality of research products. The NRC has adopted criteria for the selection of peer reviewers and the performance of peer reviews that are consistent with the peer review criteria in OMB's guidelines on information quality. The NRC is also now evaluating its criteria in the light of the peer review guidelines that OMB issued on December 16, 2004.
  - Adherence to Quality Management Control standards prior to disseminating information at the NRC's public Web site.
- Ensure that information is reliable and unbiased in the following ways:
  - Apply sound statistical and research methods to generate data and analytical results for scientific and statistical information.
  - Use peer reviews of agency-sponsored research that is relied upon. Where information has been subject to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity. However, this presumption is rebuttable based on a persuasive showing in a particular instance.
  - Use reviews of agency information by independent advisory committees, as appropriate, including the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), and the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

- Use reviews by the Committee to Review Generic Requirements (CRGR), as appropriate, for information and related analyses with generic implications.
  - Use reviews by Agreement States, as appropriate, for matters pertaining to the regulation of nuclear materials.
  - Provide opportunities for the public and States to comment on rulemakings, Commission policy statements, regulatory guides, and other information products, as appropriate.
  - Hold public meetings to seek public views and solicit public comments through the NRC's Web site and Federal Register notices, as appropriate.
  - Comply with internal policy to ensure unbiased incident investigation team investigations.
  - Obtain reviews by the five member Commission of staff-proposed policy decisions.
- Achieve transparency in the following ways:
    - Include in relevant agency information products descriptions of the data and methods used to develop the information product in a way that would make it possible for an independent, qualified individual or organization to reproduce the results.
    - Adhere to NRC policy and guidance overseeing the performance of regulatory analyses as provided in publicly available "Regulatory Analysis Guidelines of the U. S. Nuclear Regulatory Commission," NUREG/BR-0058, Rev. 4, and publicly available "Regulatory Analysis Technical Evaluation Handbook," NUREG/BR-0184. The NRC will perform regulatory analyses that assess uncertainty, in the context of quantifying risk, and communicate those findings to the public in a manner that meets the intent of the OMB referenced information quality standards.
  - Achieve clarity in the following ways:
    - Adhere to the agency's Plain Language Program in written and electronic products.
    - Ensure that the all disseminated information receives appropriate editorial review.
    - Respond to stakeholder comments on the clarity of proposed actions.
4. All internal memoranda and guidance to agency departments and outside parties subject to the DQA, e.g., if the agency sponsored or endorsed the third party's distribution of information, relating to your agency's data-quality guidelines and procedures.

Response

NRC does not sponsor third party distribution of information.

5. Regarding analysis of risks to human health, safety, and the environment maintained or disseminated by your agency, (a) explain how your agency has adopted the quality and risk reporting principles specifically identified by the OMB guidelines to be the principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 and (b) provide the specific rationale and basis for any changes from these principles.

Response

NRC analysis of risks is governed by requirements published in its guidance, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," NUREG/BR-0058, Revision 4, and the more detailed guidance in "Regulatory Analysis Technical Evaluation Handbook," NUREG/BR-0184. The agency staff review concluded that the NRC conducts uncertainty analyses in a manner that is consistent with the standard in the Safe Drinking Water Act.

6. Regarding transparency of third-party information or data, models, or other information the agency cannot disclose, but which underlie the information and analytical results the agency does disseminate, describe and explain the rationale for your agency's "robustness checks," as referenced in the OMB guidelines, and disclosure of the underlying data and analysis, per the DQA.

Response

The NRC Information Quality Guidelines state that if reproducibility is not achievable through public access because of confidentiality protection or compelling interests, analytical results will receive especially rigorous reviews and the staff will describe the specific reviews, as well as the specific data sources, quantitative methods, and assumptions.

7. Describe and explain in detail the administrative mechanisms for responding to DQA petitions for correction of information that does not comply with DQA guidelines, including, but not limited to, (a) how your agency ensures that petition review is objective; (b) how your agency ensures a timely response, including criteria for extensions of decisions; (c) who performs the reviews; (d) how your agency defines "affected persons" and the basis for this definition as it relates to DQA petitions; and (e) under what conditions the agency acts on petitions during rulemaking or other administrative proceedings.

Response

The administrative mechanisms for responding to Information Correction Requests (ICRs) were set forth in a Memorandum dated August 16, 2002, to Office Directors and Regional Administrators from Stuart Reiter, Chief Information Officer, Subject: "NRC Information Quality Guidelines" (Attachment 2). A summary of the process follows:

ICRs that cite the agency's Information Quality Guidelines are submitted to the agency Information Quality Coordinator (IQC). The IQC, within 5 calendar days determines if the submitter is an affected party and that the submission contained all required

information. If the request meets these two acceptance criteria, the IQC submits the request to the NRC office knowledgeable of the information in question, typically the office that issued the document for which the correction is being requested. A management level official at the Branch Chief level (normally of Senior Executive Service rank) in the NRC office knowledgeable of the information in question, typically the office that issued the document for which the correction is being requested, is assigned to review an ICR. The reviewing Branch Chief official provides a written report to the IQC supporting his determination. The IQC independently assesses each decision to correct information for its impact on other agency processes and activities. Based on the Branch Chief's report, the IQC prepares a response to the requester providing the Branch Chief's official determination. If the corrective action taken or to be taken was not the requester's recommended solution, or if no corrective action was taken, the response will provide information on how the requester can appeal the agency's decision.

- (a) A management level official at the Branch Chief level (normally of Senior Executive Service rank) in the NRC office knowledgeable of the information in question, typically the office that issued the document for which the correction is being requested, is assigned to review an ICR. Placing the review at the Branch Chief level NRC ensures that an official of senior rank, rather than the staff or first line supervisor who produced the information, conducts the review. Also, this approach ensures that the official is knowledgeable of the subject matter.
- (b) The review must be completed within 45 days of its receipt; otherwise, the agency must notify the requester in writing that additional time is required, the reason why, and an estimated decision date.
- (c) A management level official at the Branch Chief level (normally of Senior Executive Service rank) in the NRC office knowledgeable of the information in question (typically the office that issued the document for which the correction is being requested), is assigned to review an ICR.
- (d) NRC Information Quality Guidelines do not define who are affected persons. NRC Information Quality Guidelines require that a submitter of an ICR state specifically how the submitter is affected by the information for which the submitter is seeking correction.
- (e) NRC Information Quality Guidelines state that the ICR procedural mechanism set forth in its Information Quality Guidelines will not apply to responses to ICRs in documents or supporting technical bases that are subject to a comprehensive public comment process, such as notices of proposed rulemakings, regulatory analyses, Environmental Impact Statements, and requests for comments on an information collection subject to the Paperwork Reduction Act, where the NRC responds to the comments before taking final action. These ICRs will be handled in accordance with the directions in the Federal Register notice requesting public comment on a given document. The agency action taken with respect to these requests for correction will be addressed when the agency issues its final document.



8. Regarding appeals of DQA-related agency decisions, (a) describe and explain your agency's appeals process as it relates to DQA, the offices, job titles, and names of individuals responsible for appeals, and how the agency ensures the objectivity of the appeals review; and (b) describe and explain your agency's position regarding the potentially available appellate avenues, including administrative hearings and the Federal court system, as a means of petitioners to appeal agency decisions relating to DQA.

Response

- (a) If an NRC's ICR determination is appealed, the appeal is assigned to a Division Level manager (always of Senior Executive Service Rank) to conduct the appellate review. The Division Director assigned to review the appeal cannot be the supervisor of the Branch Chief that made the initial determination.
- (b) NRC's view is that its internal administrative review procedures ensure that there is a thorough, adequate, and independent initial and appellate review of any ICR. The NRC has not taken a position on whether the Federal courts can review agency actions on correction requests, but we are aware that one Federal Court ruled last November that judicial review is not available for Information Quality Act claims. See *Salt Institute v. Thompson*, Civil Action No. 04-359, Eastern District of Virginia (November 15, 2004).
9. A listing and detailed description of the number and nature of all complaints or petitions received by your agency regarding the accuracy of information disseminated by your agency as well as the parties within the agency that reviewed such petitions and complaints.

Response

NRC has received no Information Correction Requests.