



## **POLICY ISSUE** **(Information)**

March 24, 1994

SECY-94-081

**FOR:** The Commissioners

**FROM:** James M. Taylor  
Executive Director for Operations

**SUBJECT:** CONTROL AND OVERSIGHT OF THE LICENSING SUPPORT SYSTEM

**PURPOSE:**

To advise the Commission of the staff's approach for maintaining NRC control and oversight of the Licensing Support System (LSS) under the preferred option that allows DOE to develop and operate the LSS within InfoSTREAMS. The staff intends to present this approach at the next meeting of the LSS Advisory Review Panel (LSSARP).

**SUMMARY:**

The LSSARP held a two day meeting in Las Vegas, Nevada, on October 5-6, 1993. All participating organizations serving on the panel were represented except the Securities and Exchange Commission. At the Commission's direction, this meeting was used as a vehicle for the staff to brief the members of the LSSARP on a method of achieving a viable LSS system at a significant cost reduction by combining the LSS with the DOE Office of Civilian Radioactive Waste Management (OCRWM) InfoSTREAMS document management system. This approach was presented as Alternative 3 in SECY-93-107 - Licensing Support System Program and Budget Responsibilities. The Panel discussed Alternative 3 and the other alternatives in SECY-93-107 at length.

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**NOTE:** IN LIGHT OF THE UPCOMING LSSA REVIEW PANEL MEETING ON APRIL 14 & 15, THIS PAPER WILL BE MADE PUBLICLY AVAILABLE ON MARCH 31, 1994

While the Panel expressed the general view that InfoSTREAMS may be an appropriate foundation for the LSS, several members said they would not favor Alternative 3 if it would result in an erosion of NRC control of the LSS. In reply, NRC participants described for the Panel NRC's plans for developing and implementing a significantly enhanced quality assurance and auditing program under the LSS Administrator (LSSA). They stressed that this program would provide a solid basis for assuring positive NRC control over the system. At the conclusion of the meeting a consensus was reached among the Panel members that an additional meeting should be scheduled for further discussion of the control mechanisms NRC would employ if Alternative 3 is implemented.

#### DISCUSSION:

A follow-on meeting with the LSS Advisory Review Panel has been scheduled for April 14 and 15, 1994, to focus primarily on the mechanisms the Commission has available to ensure substantive NRC control of the LSS, including the availability and integrity of the database. The following sections detail the main elements of the control mechanisms that, as a package, will allow NRC to be effective in discharging its responsibility to control DOE's operation of the LSS. These mechanisms include a thorough and rigorous Compliance Assessment Program conducted by the LSS Administrator, the exercise of NRC management authority in its role as prospective regulator, and the establishment of major responsibilities and obligations in a Memorandum of Understanding with DOE.

#### A. COMPLIANCE ASSESSMENT:

The LSSA has commissioned the development of the LSS Compliance Assessment Program (CAP). The purpose of this program is to ensure the overall integrity of the LSS database. Included in this program is a set of procedures specifically designed to monitor the performance of DOE's operation of the LSS. These procedures ensure that the LSSA will be alerted to any operational deficiencies or irregularities in time to seek corrective action before the quality or timeliness of the LSS database can be compromised.

The CAP will include activities that will examine the accuracy and completeness of participant-submitted LSS materials through strict quality control reviews and inspections. Automated tools used by this function will be developed by the LSSA, independent of DOE. These tools will allow the LSSA to identify deficiencies in the content of the data as entered into the system by DOE and will track DOE's loading of participant submissions against an established loading

schedule.

The cornerstone of the program will be LSSA-conducted, semi-annual audits of DOE's LSS operations. Once the LSS is fully operational, the LSSA's auditing responsibilities will include examining:

- DOE's LSS operations procedures, schedules and reporting mechanisms;
- LSS system's acceptance testing;
- LSS operation, including document capture of DOE materials and integration of non-DOE materials captured by participants;
- LSS database administration and security;
- LSS system contingency planning;
- LSS telecommunications services;
- LSS system support services;
- LSS operational performance; and
- LSS change control procedures.

Each audit will be conducted by a team assembled under LSSA direction. The team will consist of four qualified personnel who will spend approximately sixteen weeks on each of the semi-annual audits. The total expenditure of the four auditors would be approximately one FTE per audit. The audit will include onsite inspection of each DOE processing site, including DOE headquarters. The LSSA will also request the participation of LSSARP representatives as observers during the audits so the LSSARP can judge its quality and completeness.

The semi-annual auditing of DOE activities will result in regularly scheduled auditing activity being conducted over seven months out of each year. In addition, the LSSA will provide for ongoing, daily monitoring of DOE's operation of the LSS via both onsite inspection and remote system monitoring. In combination, these activities will allow the LSSA to identify major operational problems requiring prompt resolution.

**B. NRC MANAGEMENT AUTHORITY OVER LSS DESIGN, DEVELOPMENT AND OPERATION:**

The staff has identified several mechanisms that the Commission would use to remedy any deficiencies that may be identified in DOE's design, development, or operation of the LSS in the pre-license application phase. In order to put these mechanisms in perspective, it is necessary to examine the NRC's jurisdiction over DOE, generally, in the pre-license application phase.

The Commission's regulatory authority regarding DOE facilities for the disposal of HLW is derived from Sections 202(3) and (4) of the Energy Reorganization Act of 1974. Although DOE is required by the Nuclear Waste Policy Act of 1982 to seek Commission review of various actions in the pre-license application phase, this does not constitute NRC jurisdiction over DOE in the sense that the Commission's formal regulatory tools, such as orders, will apply. As the Commission noted in its development of 10 CFR Part 60, during site characterization, i.e. the pre-license application phase, there would be no facility for the disposal of HLW and therefore no basis for the exercise of the Commission's licensing authority. Furthermore, the Commission stated that "the Commission cannot direct the Department to comply with the provisions [of 10 CFR Part 60] for involving it during site characterization." 44 Fed. Reg. 70408, December 6, 1979. However, the Commission emphasized that "[a]lthough the Commission cannot direct the Department to comply with the provisions for involving it during site characterization activities, any failure to do so is likely to result in imprudent expenditures and subsequent delays, and ultimately could result in the denial of the application for the proposed site." *Ibid.* 70409. The Commission has undertaken to satisfy its interest in DOE activities before the license application is submitted by methods such as reviewing DOE reports, participating in technical meetings and site visits with DOE, and observing DOE quality assurance audits. All of these methods are intended to assist the Commission in making licensing findings when and if DOE submits a license application. It is in DOE's interest to resolve any differing views and correct all deficiencies identified in order to improve its chances for an efficient and favorable review of its HLW license application.

The staff has identified several mechanisms that would assist in ensuring that DOE fulfills its LSS design, development and operational responsibilities, including document loading. They would be based on the same philosophy that applies to other aspects of the NRC/DOE HLW interactions in the pre-license application phase, i.e., ensuring that deficiencies are brought to DOE's attention promptly and effectively, and qualifying future NRC action in regard to the submittal and processing of the DOE license application.

**1. LSSA Audit Reports to the Commission**

The LSSA would report regularly the results of the scheduled and ad hoc audits of DOE LSS operational activities to the Commission. Any major deficiencies identified that would adversely impact the viability of the LSS would be highlighted in each audit report, along with a description of corrective actions being taken by DOE for each deficiency. In the event that DOE had not taken adequate corrective actions, these reports would allow the LSSA to quickly elevate major problems to the highest levels for prompt corrective action. If necessary, the Chairman would meet with the Secretary of DOE to discuss these problems and to secure cooperation in working towards their resolution.

**2. DOE Periodic Reports to the Commission**

The Commission would request that DOE submit an annual report and brief the Commission on the status of the LSS design, development, and operation. DOE would be specifically asked to address any potential deficiencies or inadequacies identified through the NRC oversight of DOE performance, discussed above. Comments on DOE performance also would be solicited in advance of the Commission briefing from all potentially interested parties. In addition, a representative of the LSS Advisory Review Panel would be invited to make a presentation at the Commission briefing on DOE performance. This type of focused Commission scrutiny would be an incentive for DOE to ensure that it carries out its LSS responsibilities adequately. As with all other activities in the pre-license application phase, there would be no immediately enforceable sanction that the Commission could impose on DOE to correct the deficiencies. Rather, the Commission would need to employ its authority over the submission and processing of the license application, discussed below.

**3. Role of Pre-licensing Application Presiding Officer Identified in the LSS Rule, 10 CFR Part 2, Subpart J**

Section 2.1010 authorizes the Commission to designate a Pre-License Application Presiding Officer to carry out certain functions under the LSS rule, including ruling on disputes over the entry of documents into the LSS during the pre-license application phase. Although the objective of this provision is to resolve disputes over the entry of specific documents or classes of documents into the LSS by individual parties, it could be expanded to allow deficiencies in the design, development, or operation of the LSS to be considered by the Pre-License Application Presiding Officer. As with the use of any of these mechanisms in the pre-license application phase, this procedure would not result in any immediately

enforceable sanctions against DOE. However, it could be used to provide an opportunity for potentially interested parties to bring document loading deficiencies to the Commission's attention. After evaluating the identified deficiencies, the Presiding Officer would certify any problems to the Commission for review and consideration.

The scope of the presiding officer's authority and the nature of the issues the presiding officer can consider, will need to be carefully evaluated before assigning any new authority of this type. Although the staff does not believe that the extension of the presiding officer's authority to address system development and operation issues needs to be an essential part of the NRC supervision and control framework for the LSS, we will discuss it with the LSSARP at the upcoming April meeting.

#### 4. Docketing of the License Application

Section 2.1012 of the Commission's regulations on the LSS establishes provisions for compliance with the document submission requirements of 10 CFR Part 2, Subpart J. DOE may not submit the HLW license application for docketing under Subpart J unless the LSS Administrator certifies that DOE is in substantial and timely compliance with the document submission requirements in Section 2.1003. Although this deprives DOE of any of the benefits for expediting the Commission's review of the license application provided by the LSS, or any of the other process improvements in Subpart J, the regulations still permit the NRC to docket and process the license application under the procedures in Subpart G of the Commission's regulations in 10 CFR Part 2.

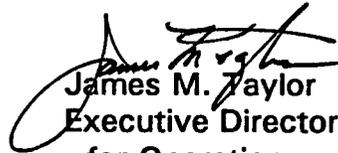
Having the option to prohibit the docketing of the license application was proposed in SECY-93-107 as a mechanism to ensure that DOE fulfills its design responsibilities. The Commission in its Staff Requirements Memorandum of June 4, 1993, rejected this recommendation. However, if DOE was seriously remiss in fulfilling its obligations, the staff would not docket the license application under Subpart J until the Commission had been fully informed of the situation and its potential implications.

**C. MEMORANDUM OF UNDERSTANDING:**

In order to ensure that the major responsibilities and obligations of DOE and the NRC in regard to the design, development, and operation of the LSS in the pre-license application phase are clearly identified and understood, as well as to demonstrate a commitment to those responsibilities, the Commission would enter into a Memorandum of Understanding (MOU) with DOE on these issues. Although the provisions of the MOU will need to be developed in more detail, it should address the following broad areas:

- DOE responsibility to design, develop, and operate the LSS;
- NRC management and control authority over DOE implementation of LSS design, development, and operation;
- periodic NRC audits and on-site operations monitoring personnel, as appropriate;
- DOE's obligation to remedy any potential deficiencies identified by NRC audits or inspections;
- periodic briefings by the Director of OCRWM to the Commission on DOE's perspective of the status of LSS operations.

The MOU would be in addition to any rule changes that are necessary to implement Alternative 3.

  
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for Operations

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