

MAY 31, 1996

FOR: The Commissioners
 FROM: James M. Taylor /s/
 Executive Director for Operations
 SUBJECT: RESPONSE TO PUBLIC COMMENTS ON DRAFT REGULATORY GUIDE, "TOPICAL GUIDELINES FOR THE LICENSING SUPPORT SYSTEM" (DG-3009) AND CORRESPONDING REVISIONS TO THE REGULATORY GUIDE

PURPOSE:

To inform the Commission of the staff's intent to publish a regulatory guide, "Topical Guidelines for the Licensing Support System."

BACKGROUND:

On April 14, 1989, the Commission issued **10 CFR Part 2**, Subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository." As part of the statement of considerations for this rule, the Commission identified interim topical guidelines with a notation that these guidelines would be revised and developed into a regulatory guide. By the Staff Requirements Memorandum (SRM) dated August 1, 1989, on SECY-89-186, "Consolidation of Revisions to the Commission's Rules of Practice in Order to Streamline the High-Level Waste Licensing Process" (in conjunction with an April 7, 1989, SRM on SECY-89-027, "Final Rulemaking on the Licensing Support System for the High-Level Waste Licensing Proceeding") the Commission directed the staff to "...review, clarify, and modify" the interim topical guidelines and prepare a draft regulatory guide (DRG). The Commission also directed the staff to provide the DRG to the Commission for comment before publication. In SECY-90-187, "Topical Guidelines for the Licensing Support System," dated May 24, 1990, the staff provided the DRG to the Commission. In another SRM dated June 22, 1990, the Commission directed the staff to obtain comments from the Licensing Support System Advisory Review Panel (LSSARP) before publication. The DRG (DG-3009) was transmitted to the LSSARP in July 1990, and the LSSARP was briefed on the DRG in October 1990. As a result of these interactions, the LSSARP voiced its objections to the proposed exclusions of environmental and transportation information in the DRG. According to the LSSARP (Hoyle/Bernero Memorandum dated February 21, 1991):

... NRC should provide additional rationale for the proposed exclusions. Some members are concerned that excluding environmental and transportation-related documents is unwarranted at this time because information could be excluded prematurely that might be relevant, or likely to lead to the discovery of information that is relevant to issues in the NRC licensing proceedings They also believe that to exclude such information at this point in the process would be based on the presumption that it would not later be relevant to NRC's adoption of the EIS [Environmental Impact Statement], a presumption which they believe is premature All members of the Panel, except NRC, strongly urge that if the NRC proposed to exclude documents dealing with transportation and environmental issues from the LSS, that decision should be made in a rulemaking proceeding so that a judicial determination can be obtained on the legality of such exclusions.

Based on the LSSARP concerns, the staff presented for Commission consideration the following three options in SECY-93-017, "Response to the Licensing Support System Advisory Review Panel's Comments on the Draft Regulatory Guide, "Topical Guidelines for the Licensing Support System."

1. Modify the DRG to include "Transportation" and "Environmental Information" as additional topics in the body of the DRG.
2. Make no changes to the DRG. The Commission might also undertake a rulemaking to exclude transportation and environmental information from the Licensing Support System (LSS), as suggested by the LSSARP, to facilitate an early challenge and judicial resolution of the scope of NRC review.
3. Modify the DRG to include a new Appendix C, "Material Beyond the Scope of the Licensing Proceeding," which would allow the parties voluntarily to submit documentary material pertaining to environmental issues and transportation issues to a separate part of the LSS.

The staff recommended Option 1, that environmental and transportation information be included in the DRG for several reasons, including 1) the possible relevance of environmental and transportation information for determinations on the "significant and substantial new information or new considerations" criterion of **10 CFR 51.109(c)(2)**, and 2) NRC's independent obligations pursuant to such statutes as the Endangered Species Act of 1973 and the American Indian Religious Freedom Act, which may require access to a broad range of environmental information.

The Commission approved the staff's recommendation and the DRG was modified to include transportation and environmental issues under a category labeled "General Information." Notice of Availability for the proposed guide appeared in the Federal Register in July 1993 with a 90-day comment period. The public comment period was extended in response to a request from the U.S. Department of Energy (DOE **EXIT**). In October 1993, the staff discussed the DRG with the LSSARP. Although the LSSARP chose, as a group, not to formally comment on the DRG, the staff reviewed the transcript of the public meeting and incorporated relevant comments. In addition, individual members of the LSSARP submitted independent written comments on the DRG. In total, DOE, the State of Nevada, and several local governments provided comments. The staff has completed its analysis of public comments and has revised the regulatory guide accordingly.

The proposed issue of the Regulatory Guide was put on "hold" when, in response to a NRC Inspector General report, the Commission established a Senior Management Team (SMT) to review all LSS activities. The SMT will be providing recommendations to the Commission at a later date. However, it has been determined that the SMT recommendations will not modify the proposed Regulatory Guide. The members of the LSSARP requested that the Regulatory Guide be published since extensive interactions on the guide had occurred. In addition, publication of the Regulatory Guide will facilitate DOE institutionalizing its decision-making process and putting the documentation into an electronic, retrievable, format.

Lastly, the staff notes that, consistent with the mandates of the Energy Policy Act of 1992, the Environmental Protection Agency (EPA **EXIT**) is developing site-specific environmental radiation protection standards for the potential repository at Yucca Mountain. In this regard, the Act specifies that the Commission must promulgate a rule so that the Commission regulations are consistent with the new EPA standards. Any future changes in the regulatory framework that would require a change in the proposed Regulatory Guide, such as rulemaking to make the NRC requirements consistent with the revised EPA standards that are currently under development, will be reflected in a future revision to the guide.

Summary of Public Comments:

Commenters reiterated the original LSSARP concern that the topics of environmental and transportation information would not be fully covered. In addition, there were requests for clarification of the terms "environmental information" and "transportation information" and for the inclusion of socio-economic information, as well as environmental information. Commenters also requested the clarification that the topic "transportation" refers to the transport of spent fuel.

Revisions to the Regulatory Guide:

The most significant public comments involved the perception that environmental, socio-economic, and transportation issues were not appropriately addressed in the DRG. To clarify the staff's intent, a new category has been added to Section C of the regulatory guide, concerning information for preparation of a geologic repository environmental impact statement (EIS). The new category has three distinct subcategories: environmental, socio-economic, and transportation. The staff's detailed responses to public comments are given in [Attachment 1](#) and the resulting revisions to the regulatory guide are shown in [Attachment 2](#), in a "red-line" version, to indicate where changes have been made. [Attachment 3](#) is the final regulatory guide.

Issuing this final regulatory guide also resolves a regulatory uncertainty (UN 48) identified by the staff in Enclosure 5 of SECY-90-207, "First Update of the Regulatory Strategy and Schedules for the High-Level Waste Repository Program," and Enclosure 2 of SECY-91-225, "Second Update of the Regulatory Strategy and Schedules for the High-Level Waste Repository Strategy and Schedules for the High-Level Waste Repository Program," associated with the need to finalize these topical guidelines.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

The Office of the Inspector General has reviewed this paper and has no comments.

RECOMMENDATION:

Unless directed otherwise by the Commission within ten working days of the date of this paper, the staff will initiate the process for publishing the final regulatory guide.

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[Attachments](#) 

1. NRC Staff Responses to Public Comments
2. Proposed Revisions to the Draft Regulatory Guide
3. Final Regulatory Guide