

Date of initial notice in Federal Register: October 14, 2003 (68 FR 59219).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 10, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: October 22, 2003 (TS 03-12).

Brief description of amendment: The amendments extend from 1 hour to 24 hours the completion time for Condition B of Technical Specification 3.5.1.1, which defines requirements for the restoration of an emergency core cooling system accumulator when it has been declared inoperable for a reason other than boron concentration.

Date of issuance: June 18, 2004.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment Nos.: 291 and 281.

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: January 6, 2004 (69 FR 699).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 2004.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 6, 2003, as supplemented by the letter dated December 19, 2003.

Brief description of amendment: The amendment revises several surveillance requirements (SRs) in Technical Specifications (TSs) 3.8.1 and 3.8.4 on alternating current and direct current sources, respectively, for plant operation. The revised SRs have notes deleted or modified to allow the SRs to be performed, or partially performed, in reactor modes that previously were not allowed by the TSs. The licensee withdrew the changes to SRs 3.8.4.7 and 3.8.4.8 in its letter dated April 14, 2004.

Date of issuance: June 14, 2004.

Effective date: June 14, 2004, and shall be implemented within 60 days of the date of issuance including the incorporation of the changes to the Technical Specification Bases as described in the licensee's letters dated June 6 and December 19, 2003, and April 14, 2004.

Amendment No.: 162.

Facility Operating License No. NPF-30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 22, 2003 (68 FR 43394).

The December 19, 2003, and April 14, 2004, supplemental letters provided additional clarifying information, did not expand the scope of the application as noticed and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 14, 2004.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 9, 2004.

Brief description of amendment: The amendment revises TS 5.5.7, "Reactor Coolant Pump Flywheel Inspection Program," to increase the inspection interval from 10 years to 20 years.

Date of issuance: June 16, 2004.

Effective date: June 16, 2004, and shall be implemented within 90 days from the date of issuance.

Amendment No.: 153.

Facility Operating License No. NPF-42: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 16, 2004 (69 FR 12373).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 16, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 28th day of June 2004.

For the Nuclear Regulatory Commission.

Edwin M. Hackett,

Acting Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by

the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

The NRC has issued Revision 1 to Regulatory Guide 3.69, "Topical Guidelines for the Licensing Support Network," which provides guidance acceptable to NRC Staff regarding the scope of documentary material that should be identified in or made available via the Licensing Support Network (LSN). The original version of this regulatory guide was published on September 19, 1996 (61 FR 49363). The LSN is an electronic information system that makes relevant documentary material available (via the Internet at <http://www.lsnnet.gov>) to parties, potential parties, and interested governmental participants in the adjudicatory proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area. The LSN facilitates document discovery similar to that available in NRC licensing proceedings. A proposed draft revision 1 of Regulatory Guide 3.69 (DG-3022) was made available for comment on July 2, 2002 (67 FR 44478). The proposed revision modified the topical guidelines to be consistent with the license application content specified in 10 CFR Part 63, "Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada," (66 FR 55732, November 2, 2001), the structure of proposed Revision 2 of the "Yucca Mountain Review Plan," NUREG-1804, published for comment on March 29, 2002 (67 FR 15257), the topics in the U.S. Department of Energy's "Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada," dated February 2002, and the topics in Draft NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs," dated August 2001. The comment period for proposed Revision 1 of Regulatory Guide 3.69 (DG-3022) closed September 30, 2002.

This revision also reflects modifications made in response to comments and a recently issued change to 10 CFR 2.1005, which excludes "Correspondence between a potential party, interested governmental participant, or party and the Congress of the United States" from documentary material to be identified in or made available via the LSN. See "Licensing Proceeding for a High-Level Radioactive Waste Geologic Repository; Licensing Support Network, Submissions to the

Electronic Docket,” 69 FR 32836 (June 14, 2004). Minor editorial changes were also made.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. Jeffrey A. Ciocco, (301) 415-6391, e-mail jac3@nrc.gov.

Regulatory guides are available for inspection or downloading at the NRC's Web site at www.nrc.gov under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, or by fax to (301) 415-2289, or by e-mail to distribution@nrc.gov. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1-800-553-6847; <http://www.ntis.gov>. A copy of the Yucca Mountain Review Plan, NUREG-1804, Revision 2, Final Report, is also available for inspection, and copying for a fee, in NRC's Public Document Room, One White Flint North, Public File Area, O-1F21, 11555 Rockville Pike, Rockville, Maryland. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

In preparing Revision 1 of Regulatory Guide 3.69, “Topical Guidelines for the Licensing Support Network,” NRC Staff reviewed and considered all the comments received during the public comment period from eight commenters:

Commenters

- (1) A.S. Hunjan, India.
- (2) Board of County Commissioners, Lincoln County, Nevada, (submitted on behalf of Lincoln County and the City of Caliente).
- (3) Eureka County, Nevada.
- (4) Nuclear Energy Institute.
- (5) Exelon Generation, Warrenville, Illinois.
- (6) State of Nevada.
- (7) CP&L and Florida Power, Raleigh, North Carolina.
- (8) U.S. Department of Energy.

Commenter: A.S. Hunjan, India

Comment 1. The commenter recommended that the definition of “document,” in the third paragraph of Section A, “Introduction,” of the regulatory guide, be revised to include optical media, because magnetic media are included in this definition.

Response 1. The definition of “document” in the regulatory guide is quoted from 10 CFR 2.1001, “Definitions.” It is not necessary to add optical media to this definition because optical media are encompassed by the words “or other documentary material, regardless of form or characteristic.”

Comment 2. The commenter recommended that Item 1.1, “General Description,” under Section C, “Topical Guidelines,” include the position of the facility with respect to the site.

Response 2. The topics in Sections C.1 and C.2 of the regulatory guide are the subjects listed in the “Table of Contents,” of NUREG-1804, “Yucca Mountain Review Plan,” Revision 2, dated July 2003 (hereafter “Yucca Mountain Review Plan”), which the NRC Staff would use to review an application for a high-level waste repository at Yucca Mountain, Nevada, submitted under 10 CFR Part 63. The topical guidelines identify a list of general topics for documentary materials related to the adjudicatory proceeding on a license application for a geologic repository at Yucca Mountain, Nevada. Information on the location of facilities for a high-level waste repository is addressed in the Yucca Mountain Review Plan and is encompassed by the topics listed in Section C of the “Topical Guidelines.” Additional detail is not necessary.

Comment 3. The commenter recommended that Item 1.2, “Proposed Schedules for Construction, Receipt, and Emplacement of Waste,” under Section C, “Topical Guidelines,” include the basic attributes of the spent fuel (such as chemical form, date of removal from reactor, burnup at date of removal).

Response 3. The topics in Sections C.1 and C.2 of the regulatory guide are the subjects listed in the “Table of Contents” of the Yucca Mountain Review Plan, which the NRC Staff would use to review an application for a high-level waste repository at Yucca Mountain, Nevada. The “Topical Guidelines” identify a list of general topics for documentary materials relevant to an adjudicatory proceeding on a license application for a geologic repository at Yucca Mountain, Nevada. Information on the basic attributes of the spent fuel is addressed in the Yucca

Mountain Review Plan and is encompassed by Section C of the “Topical Guidelines.” Additional detail is not necessary.

Comment 4. The commenter recommended that Item 1.3, “Physical Protection Plan,” under Section C, “Topical Guidelines,” include the design basis threat against which the physical protection plan is to be effective.

Response 4. Sections C.1 and C.2 of the regulatory guide reflects the structure of the Yucca Mountain Review Plan, which the NRC staff would use to review an application for a high-level waste repository at Yucca Mountain, Nevada. The general topics in the “Topical Guidelines” are not intended to identify all the specific information that would be evaluated during an NRC licensing review. Information on the physical protection plan is addressed in the Yucca Mountain Review Plan, which references 10 CFR 73.51, and is encompassed by Item C.1.3 of the “Topical Guidelines.” Additional detail is not necessary.

Comment 5. The commenter recommended that Item 2.1.1.2, “Description of Structures, Systems, Components, Equipment, and Operational Process Activities,” under Section C, “Topical Guidelines,” include the facility and individual area layout.

Response 5. The topics in Sections C.1 and C.2 of the regulatory guide are the subjects listed in the “Table of Contents” of the Yucca Mountain Review Plan, which the NRC Staff would use to review an application for a high-level waste repository at Yucca Mountain, Nevada. Information on the facility and individual area layout for a high-level waste repository is addressed in the Yucca Mountain Review Plan and is encompassed by Section C of the “Topical Guidelines.” Additional detail is not necessary.

Commenter: Board of County Commissioners, Lincoln County, Nevada (Submitted on Behalf of Lincoln County and the City of Caliente)

Comment 1. The commenter stated that, without additional detail being provided, it is not clear, in the second paragraph of “Purpose of the Regulatory Guide,” under Section B, “Discussion,” how the regulatory guide might be used by the Pre-License Application Presiding Officer in evaluating petitions for access to the LSN during the pre-license application phase under 10 CFR 2.1007. The commenter asked whether a petition would be evaluated to determine if the petitioner's issues were

reflected in the topical content of the LSN.

Response 1. The second paragraph of Section B of the draft Regulatory Guide (DG-3022) contained a misnumbered reference to an outdated provision in 10 CFR Part 2, Subpart J, that required individuals to petition for access to the system that makes documentary material electronically available. That requirement was deleted as part of the December 30, 1998 LSN rule (63 FR 71729), which changed from a central database, Licensing Support System, to a publicly available, web-based system called the LSN. The cited paragraph has been removed from Revision 1 of Regulatory Guide 3.69.

Comment 2. The commenter stated that, in the last paragraph of "Use of the Regulatory Guide," under Section B, "Discussion," it is not clear what the qualifying statement regarding the scope of transportation-related information is seeking to limit. The commenter recommended inclusion of one or more examples of transportation-related information that would be inappropriate for submission to the LSN. The commenter also asked how the Commission intends to prevent the submission or inclusion of "non-relevant" transportation-related information if information is not identified as excluded or privileged under 10 CFR 2.1005 or 2.1006. The commenter asked whether, for example, U.S. Navy waste stored at the Idaho National Engineering and Environmental Laboratory would be considered to be from a reactor, from an independent spent fuel storage facility, or from a monitored retrievable storage facility. The commenter concluded that this ambiguity may make consistent adherence to this guidance difficult.

Response 2. Information regarding the impacts of transporting high-level waste that could be disposed of at Yucca Mountain, Nevada, is analyzed in the DOE Final Environmental Impact Statement, and is encompassed by Section C of the "Topical Guidelines." Classified information (for example, regarding Naval reactor spent fuel) is excluded from LSN documentary material by 10 CFR 2.1005(g).

The purpose of the "Topical Guidelines" is to inform parties, potential parties and interested governmental participants regarding documentary material to be identified (by bibliographic header only) or made available (by image or searchable full text) via the LSN. As the NRC indicated when revising the definition of documentary material, non-relevant information could affect the responsiveness and usefulness of the

LSN by cluttering the system with extraneous material (63 FR 71729, 17130, December 30, 1998). Additional detail in the regulatory guide is not necessary.

Comment 3. The commenter recommended that Item 2.5.7, "Emergency Planning," under Section C, "Topical Guidelines," be expanded to include emergency planning and implementation, because, beyond demonstrating an adequate plan for emergency situations, the applicant will need to demonstrate that the plan can be implemented and that it has the capability to implement the plan.

Response 3. The topics in Sections C.1 and C.2 of the regulatory guide are the subjects listed in the "Table of Contents" of the Yucca Mountain Review Plan, which provides guidance for the NRC Staff review of an application for a high-level waste repository at Yucca Mountain, Nevada. The "Topical Guidelines" identify a list of general topics for documentary materials relevant to an adjudicatory proceeding on a license application for a geologic repository at Yucca Mountain, Nevada. Information on emergency planning and implementation for the high-level waste repository is addressed in sections of the Yucca Mountain Review Plan and is encompassed by the general topics in Section C of the "Topical Guidelines." Additional detail is not necessary.

Comment 4. The commenter recommended that the following items be added to the list in Appendix A, "Types of Documents," to be included in the LSN:

1. Any U. S. Department of Energy (DOE) draft and final environmental impact statement preparation plans;
2. Any DOE "Record of Decision" relating to any DOE final environmental impact statement; and
3. Any as-built drawings and specifications for the exploratory studies facility and any related facilities that may be potentially converted or modified for use in the permanent geologic repository.

Response 4. The topics in Section C.3 of the regulatory guide are the subjects listed in the "Table of Contents" of DOE's "Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada," dated February 2002, which evaluated the impacts of a potential high-level waste repository at Yucca Mountain, Nevada. Sections C.1 and C.2 are the subjects from the table of contents of the Yucca Mountain Review Plan. These general topics for documentary materials

encompass information relevant to an application for a potential repository at Yucca Mountain, Nevada. Appendix A, as modified, includes the License Application, published draft and final environmental evaluations or assessments, as well as published draft, supplemental, and final environmental impact statements. Any relevant "Record of Decision," should be identified in or made available via the LSN (see 10 CFR 2.1003(b)) as part of the environmental impact statement documentation submitted with the license application. A "Record of Decision" could also be a readily available reference. See, for example, DOE's "Record of Decision on Mode of Transportation and Nevada Rail Corridor for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV (69 FR 18557, April 8, 2004). Additional detail in the regulatory guide is not necessary.

Comment 5. The commenter encouraged the Commission to maintain the listing of "Information for a Geologic Repository Environmental Impact Statement" in Section C, "Topical Guidelines," and to urge the submission of such information.

Response 5. The regulatory guide still retains the stated information.

Commenter: Eureka County, Nevada

Comment 1. The commenter stated that the language of the second paragraph of "Purpose of the Regulatory Guide," under Section B, "Discussion," is unclear and should be clarified. The commenter asked whether not following the "Topical Guidelines" may be grounds for disqualification as a participant and stated that "access to the LSN" is confusing terminology. The commenter opined that a participant in Yucca Mountain licensing hearings must first be certified by the LSN Administrator based on the function and conformity of a Web site with Commission LSN guidelines rather than on the content of the documents. If the intent is to allow the judge to disqualify potential parties based on the "Topical Guidelines," the commenter recommended that this be clearly stated.

Response 1. Under 10 CFR 2.1009(b), a responsible official of an LSN participant must certify to the Pre-License Application Presiding Officer (not the LSN Administrator) that, among other things, procedures implementing the requirements to make documentary material available (10 CFR 2.1003) have been implemented. As stated in response to Comment 1, above, from Lincoln County, the second paragraph of Section B pertained to an outdated

regulation in 10 CFR Part 2, Subpart J, that required individuals to petition the Pre-license Application Presiding Officer for access. That requirement was deleted in 1998 (63 FR 71729, December 30, 1998) with the change from a central database to a publicly available, web-based LSN. The cited paragraph has been removed from Revision 1 of Regulatory Guide 3.69.

Comment 2. The commenter noted that the terms “draft and final environmental assessments,” used in Item 8.1 of Appendix A, “Types of Documents,” to be included in the LSN are specific terms in the National Environmental Policy Act (NEPA). The commenter requested clarification as to whether these terms refer only to NEPA-defined environmental assessments or more broadly to all environmental reviews. If the latter, the commenter suggested using the term “environmental reviews.”

Response 2. Item 8.1 is now Item 7.1 of Appendix A due to the removal of former Item 7, “Congressional questions and answers,” consistent with the exclusion of Congressional correspondence from LSN documentary material, effective July 14, 2004 (69 FR 32836, June 14, 2004). This item encompasses published environmental documentation related to a geologic repository at Yucca Mountain, Nevada. For clarity, the category “draft and final environmental assessments” has been expanded to include draft and final environmental evaluations or assessments that are prepared under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* A new Item 7.7, “DOE environmental report,” has been added to encompass any DOE environmental report that DOE may decide to submit with its license application.

Comment 3. The commenter noted that Item 8.8 of Appendix A, “Types of Documents To Be Included in the Licensing Support Network,” refers only to DOE’s environmental impact statements. The commenter recommended revision to allow for environmental impact statements not generated by DOE, including those generated by other Federal agencies, such as land-use environmental impact statements produced by the U.S. Department of Interior, Bureau of Land Management and U.S. Department of Defense-generated environmental impact statements that might pertain to the topic.

Response 3. Item 8.8 (now Item 7.9) of Appendix A encompasses any published draft or final environmental impact statements related to a license application for a geologic repository at

Yucca Mountain, Nevada. The text of Revision 1 of Regulatory Guide 3.69 has been modified accordingly.

Commenter: Nuclear Energy Institute

Comment 1. The commenter recommended the addition of a clear statement of purpose for this guidance, because the currently stated purpose “to provide a list of the topics for which Licensing Support Network participants should submit documentary materials;” is not sufficient. The commenter stated that the regulatory guide needs to clearly describe at least one method that, if followed by participants in the Yucca Mountain licensing process, will meet LSN requirements. The commenter also provided several suggested wording changes, including those described in the following two comments, to accomplish this objective.

Response 1. The purpose of the regulatory guide is to provide guidance on the scope of material that should be identified in or made available via the LSN. The regulatory guide contains references to 10 CFR Part 2, Subpart J, and includes quotes from regulations defining documentary material (10 CFR 2.1001), excluded material (10 CFR 2.1005) and privileged material (2.1006). The purpose statement in the regulatory guide has been modified to clarify that it lists topics of documentary material that LSN participants should identify or make available via the LSN. Additional detail regarding LSN requirements is not necessary.

Comment 2. The commenter recommended the deletion of the second paragraph of “Purpose of the Regulatory Guide,” under Section B, “Discussion,” because the currently stated additional use of the regulatory guide “* * * in evaluating petitions for access” is not supported by guidance regarding the identification of relevant types of documentary material for inclusion in the LSN. The commenter stated that, if the Commission believes that guidance concerning access to the LSN is necessary, it should promulgate separate guidance specifically focused on that purpose.

Response 2. As stated in response to Comment 1 above from Lincoln County, the second paragraph of Section B addressed an outdated regulation in 10 CFR Part 2, Subpart J, that required individuals to petition the Pre-license Application Presiding Officer for access. That requirement was deleted with the 1998 rule (63 FR 71729, December 30, 1998) with the change from a central database to a publicly available, web-based LSN. The cited paragraph has been removed from Revision 1 of Regulatory Guide 3.69.

Comment 3. The commenter recommended that the last sentence of the second paragraph of “Use of the Regulatory Guide,” under Section B, “Discussion,” be deleted, because the statement is too broad and contradicts the purpose of the guidance. The commenter suggested that inclusion in the LSN of other documents related to topics in the Yucca Mountain Review Plan and the DOE Yucca Mountain Final Environmental Impact Statement defeats the purpose of providing guidance on what types of documents relating to these topics should be included.

Response 3. The last sentence of the second paragraph of “Use of the Regulatory Guide” indicates that Appendix A lists document types to be identified in or made available via the LSN, but is not exhaustive. That sentence has been revised to indicate that LSN documentary material should include material “relevant” to the topics listed in Section C of the regulatory guide.

Comment 4. The commenter recommended restructuring the regulatory guide so that it provides specific guidance that will aid participants in determining what should (and should not) be included in the LSN. The commenter provided specific recommendations for accomplishing this restructuring, including reorganizing, relocating, and renaming various sections of the regulatory guide.

Response 4. The structure of the regulatory guide is consistent with NRC Staff guidance on the format and content of regulatory guides. Additionally, Section C of the regulatory guide reflects both the structure and content of the Yucca Mountain Review Plan, DOE’s Final Environmental Impact Statement, and NUREG-1748, “Environmental Review Guidance for Licensing Actions Associated with NMSS Programs,” dated August 2003. The regulatory guide identifies the scope of documentary material to be identified in or made available via the LSN. The suggested revisions are not necessary.

Comment 5. The commenter recommended clarifying the distinction between preliminary (or pre-decisional) and final (or post-decisional) documentary material. The commenter also recommended providing specific guidance for assessing relevance for each type of information because a different test of relevance may apply at different points in a participant’s decision-making process. The commenter provided specific suggestions for reorganizing, relocating, and renaming various sections of the

regulatory guide, as well as additional provisions regarding levels of authority, levels of formality, and the time frame during which preliminary information is relevant to the hearing process.

Response 5. Traditional uses of the term “pre-decisional” and “post-decisional” under NRC and Federal case law would apply in the licensing proceeding. In addition, in issuing recent changes to 10 CFR Part 2, Subpart J, the NRC indicated that “reliance” information (*i.e.*, information an LSN participant intends to rely on and/or cite in support of its position, or information it possesses or develops that is contrary to that position) is difficult to identify prior to the filing of contentions in a proceeding. See “Licensing Proceeding for a High-Level Radioactive Waste Geologic Repository; Licensing Support Network, Submissions to the Electronic Docket,” 69 FR 32836, 32843 (June 14, 2004).

The regulatory guide provides guidance on the general scope of documentary material to be identified in or made available via the LSN. The suggested revisions relating to relevance, levels of authority, levels of formality, and time frames are not necessary.

Comment 6. The commenter recommended clarifying that only information that has some nexus to the license application need be included in the LSN, and that examples be provided to guide participants in determining when such a nexus exists.

Response 6. Revision 1 of Regulatory Guide 3.69 contains the 10 CFR 2.1001 definition of “documentary material” to be identified in or made available via the LSN. That definition also includes two categories of “reliance” information as discussed in the previous comment response. No further clarification is necessary.

Comment 7. The commenter stated that its separate comments on the “Yucca Mountain Review Plan” should also be taken into account when making changes to the regulatory guide, including comments that could result in a change to the outline of the Yucca Mountain Review Plan. The commenter also noted that the outline of the “Table of Contents” from the Yucca Mountain Review Plan (Sections C.1 and C.2 of the “Topical Guidelines”) and the outline from the “Table of Contents” of the DOE “Yucca Mountain Environmental Impact Statement” in Section C.3 of the “Topical Guidelines” could be replaced with references to these two documents to make it easier to update one document without the need to revise the others.

Response 7. Any structural changes made to the Yucca Mountain Review Plan in response to public comments have been incorporated in Revision 1 of Regulatory Guide 3.69. In the interest of completeness and making the regulatory guide easy to use, however, text from the table of contents of the “Yucca Mountain Review Plan” and the DOE Final Environmental Impact Statement has been retained.

Commenter: Exelon Generation, Warrenville, Illinois

Comment. The commenter stated that it is essential that the regulatory guide be as clear and unambiguous as possible in establishing the scope and content of the LSN. The commenter provided comments to the Nuclear Energy Institute and strongly endorses the comments submitted by the Nuclear Energy Institute.

Response. Section B of the regulatory guide has broad topics to encompass information that may bear on a party’s position in the licensing proceeding or on a license application for a geologic repository issues. Additional detail is not necessary.

Commenter: State of Nevada

Comment 1. The commenter stated that several pending actions may further define the appropriate topics for LSN documentary material. These actions include pending litigation relating to the content of 10 CFR Part 63, a petition for rulemaking with respect to the content of 10 CFR Part 63, State of Nevada comments regarding the draft Yucca Mountain Review Plan (NUREG–1804), State of Nevada reply comments to the DOE comments on the draft Yucca Mountain Review Plan, and litigation challenging the content and scope of the final DOE Yucca Mountain environmental impact statement. The commenter stated that the “Topical Guidelines” should be expanded to incorporate shortcomings specifically addressed by the State of Nevada in each of actions listed above regarding the scope of the licensing proceeding. The commenter also indicated that five additional comments are made without waiving its position in any of the pending actions and with the understanding that the draft regulatory guide, as well as 10 CFR Part 63, NUREG–1804, or the DOE Final Environmental Impact Statement on Yucca Mountain should be expanded or modified to incorporate those subject areas that are ultimately deemed meritorious in the pending litigation.

Response 1. Subsequent to receipt of the comment, the State of Nevada petition for NRC rulemaking regarding

10 CFR Part 63 was denied (68 FR 9023, February 27, 2003). Federal litigation on 10 CFR Part 63 and on the DOE Final Environmental Impact Statement is still pending. The NRC will make appropriate changes to its regulations or guidance, if required, as a result of the outcome of such litigation.

Comment 2. The commenter stated that the second paragraph of “Purpose of the Regulatory Guide,” under Section B, “Discussion,” refers to the Pre-License Application Presiding Officer using the regulatory guide in evaluating petitions for access to the LSN. The commenter recommended deletion of this paragraph because it is not relevant to the current LSN rule.

Response 2. As previously noted in response to other commenters, the second paragraph of Section B, “Discussion,” of the draft regulatory guide, which referred to an outdated regulation, has been removed from Revision 1 of Regulatory Guide 3.69.

Comment 3. The commenter stated that Sections C.1 and C.2 of the “Topical Guidelines” track the “Table of Contents” of the draft Yucca Mountain Review Plan and stated that this is an acceptable and efficient approach. The commenter requested that, when the Yucca Mountain Review Plan becomes final, the regulatory guide should be reviewed and, if necessary, revised, to remain consistent with that guidance document.

Response 3. Revision 1 of the Regulatory Guide 3.69 is consistent with the content of NUREG–1804, “Yucca Mountain Review Plan,” Revision 2, dated July 2003.

Comment 4. The commenter noted that Section C.3 of the Regulatory Guide tracks the “Table of Contents” of the DOE “Yucca Mountain Environmental Impact Statement” and is consistent with the Commission’s draft “Environmental Review Guidance for Licensing Actions Associated with NMSS Programs” (NUREG–1748). The commenter stated that this is an acceptable and efficient approach, notwithstanding the State of Nevada challenge to certain aspects of the legality of the DOE Yucca Mountain environmental impact statement. The commenter requested that the regulatory guide be reviewed for consistency with NUREG–1748 when NUREG–1748 becomes final.

Response 4. The environmental topical guidelines in Section C.3 of Revision 1 of Regulatory Guide 3.69 are based on the DOE Final Environmental Impact Statement and are consistent with the content of NUREG–1748, “Environmental Review Guidance for

Licensing Actions Associated with NMSS Programs,” dated August 2003.

Comment 5. The commenter suggested that the third level headings from the “Table of Contents” of the DOE Final Environmental Impact Statement on Yucca Mountain be added to the first and second levels now in the draft revision of the regulatory guide.

Response 5. Section C.3 of the regulatory guide reflects the structure of the “Environmental Review Guidance for Licensing Actions Associated with NMSS Programs” (NUREG-1748). The “Topical Guidelines” are not intended to identify all the specific information that would be evaluated by NRC Staff during a licensing review. Rather, the “Topical Guidelines” identify categories of documentary material that should be identified in or made available via the LSN and is sufficiently detailed to encompass the suggested topics.

Comment 6. The commenter stated that Item 8.8 of Appendix A, “Types of Documents To Be Available Via the Licensing Support Network,” should not be limited to environmental impact statement materials developed by DOE, because there are other agency environmental impact statements (similar to the environmental assessments of Item 8.1) that could be included in the LSN.

Response 6. Item 8.8 (now Item 7.9) of Appendix A encompasses any published draft or final environmental impact statements prepared under NEPA. The text of the Revision 1 of Regulatory Guide 3.69 has been modified to delete the word “DOE” to clarify that all relevant environmental documents are encompassed by Section C.3 of the “Topical Guidelines.”

Commenter: CP&L and Florida Power, Raleigh, North Carolina

Comment 1. The commenter stated that the purpose of the regulatory guide should be clearly stated and supported with examples of types of documents that should be included in the LSN.

Response 1. The purpose of the regulatory guide is to provide guidance on the scope of documentary material that should be identified in or made available via the LSN. Appendix A already provides examples of types of documents that are encompassed. No additional detail is necessary.

Comment 2. The commenter stated that the regulatory guide should be consistent with the latest revision of the “Yucca Mountain Review Plan” (NUREG-1804).

Response 2. Revision 1 of Regulatory Guide 3.69 is consistent with the content of NUREG-1804, “Yucca

Mountain Review Plan,” Revision 2, dated July 2003.

Comment 3. The commenter endorses the comments submitted by the Nuclear Energy Institute.

Response 3. This comment is addresses in the above responses to Nuclear Energy Institute comments on the regulatory guide.

Commenter: U.S. Department of Energy

Comment 1. The commenter recommended that the term “potentially” be deleted from the last sentence of the first paragraph of Section A, “Introduction,” which states that the LSN is being designed and implemented to provide for the entry of and access to potentially relevant licensing information. The commenter stated that, although this term was used previously in conjunction with the LSN, it is not used in the current 10 CFR 2.1001 definition of documentary material.

Response 1. The phrase “potentially relevant licensing information” has been replaced with the phrase “relevant documentary material,” consistent with changes made to 10 CFR 2.1001 in 1998, when the Commission adopted the current definition of “documentary material.” In issuing that rulemaking, it was noted that the term “documentary material” defines the body of material that will be important for and relevant to the licensing proceeding. See 63 FR 71729, 71730 (December 30, 1998).

Comment 2. The commenter recommended that the first sentence of the first paragraph of “Use of the Regulatory Guide” under Section B, “Discussion,” be modified to add the term “draft” before the reference to the “Yucca Mountain Review Plan” (NUREG-1804) to more accurately represent the current status of the “Yucca Mountain Review Plan.”

Response 2. Revision 1 of Regulatory Guide 3.69 is consistent with the content of NUREG-1804, “Yucca Mountain Review Plan,” dated July 2003, which was issued after this comment was received.

Comment 3. The commenter recommended that the third sentence of the second paragraph of “Use of the Regulatory Guide,” under Section B, “Discussion,” be modified, for clarity and consistency, to read: “Types 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.”

Response 3. The suggested word changes were made to the third sentence of the second paragraph of “Use of the Regulatory Guide” under Section B, “Discussion,” to clarify the scope of

LSN documentary material. The regulatory guide was also modified to reflect that under 10 CFR 2.1003 documentary material is either identified (by bibliographic header information only) or made available (in image or searchable full text) via the LSN.

Comment 4. The commenter noted that the last paragraph of “Use of the Regulatory Guide,” under Section B, “Discussion,” addresses information to be included for a geologic repository environmental impact statement, and that 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.” The commenter stated that it is not clear from this statement what information is meant to be included in the LSN. The commenter requests further clarification of this statement and guidance from the Commission on the type of information to be included in the LSN regarding transportation of high-level waste and spent nuclear fuel to a repository at Yucca Mountain, Nevada. The commenter further stated that such clarification would be useful, particularly with respect to interpreting the guidance in Item C.3.6 of the “Topical Guidelines,” which identifies environmental impacts from transportation as a topic of information to be included in the LSN.

Response 4. Section C of the regulatory guide reflects the structure of the Yucca Mountain Review Plan, the DOE Final Environmental Impact Statement, and NUREG-1748, “Environmental Review Guidance for Licensing Actions Associated with NMSS Programs.” These documents and the regulations in 10 CFR Parts 51 and 63 indicate the scope of transportation information encompassed by the various “Topical Guidelines.” Consequently, the last sentence of the last paragraph of “Use of the Regulatory Guide,” under Section B, “Discussion,” has been deleted from Revision 1 of Regulatory Guide 3.69.

Comment 5. The commenter noted that Sections C.1 and C.2 of the “Topical Guidelines,” appear to mirror the “Table of Contents” of the draft “Yucca Mountain Review Plan” and the draft “Yucca Mountain Review Plan,” and that Section B, “Discussion,” states that the “Topical Guidelines” have been kept broad and at a fairly high level of detail. The commenter recommended that the more detailed subcategories (e.g., 2.1.1.5.1 and 2.2.1.3.1) of Section

C of the "Topical Guidelines" be deleted for consistency with the more general categories in the document. The commenter stated that deleting many of the subcategories would not detract from the scope of the topics to be included in the Licensing Support Network, because 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. * * *" The commenter also stated that maintaining the "Topical Guidelines" at a high level of detail provides flexibility to all parties or potential parties to the proceeding to include documents in a broad sense, and not to be constrained by detailed subtopics that may change in the final "Yucca Mountain Review Plan."

Response 5. Section C of the regulatory guide reflects the structure of Revision 2 of the "Yucca Mountain Review Plan," dated July 2003. Detailed subcategories such as 2.1.1.5.1 and 2.2.1.3.1 refer to 10 CFR Part 63 requirements, are consistent with the level of detail in other areas, and provide explanatory information useful to the reader. The suggested deletion is not necessary.

Comment 6. The commenter stated that Section C.3 of the "Topical Guidelines" appears to mirror the "Table of Contents" of the DOE Yucca Mountain environmental impact statement, including several subcategories of information. The commenter recommended that many of the subcategories could be deleted without impacting the scope or topics of documentary material to be included in the LSN.

Response 6. Section C.3 of the regulatory guide provides a listing of environmental impact statement topics. This is consistent with the level of detail in Sections C.1 and C.2, which are based on the Yucca Mountain Review Plan, and other areas of the regulatory guide. The subcategories provided useful information and no deletion is necessary.

Comment 7. The commenter recommended that the regulatory guide explicitly state whether Item 1 of Appendix A, "Types of Documents To Be Included in the Licensing Support Network," when read together with the 10 CFR 2.1001 definition of documentary material, should be interpreted to mean that the requirement to include circulated drafts in the LSN applies only to circulated drafts related to technical reports and analyses.

Response 7. Item 1 of Appendix A paraphrases the definition of

documentary material in 10 CFR 2.1001, which requires, in part, availability of all reports or studies, and all related "circulated drafts," relevant to both the license application and the Topical Guidelines in Regulatory Guide 3.69. No further clarification is necessary.

Comment 8. The commenter stated that several other items in Appendix A, "Types of Documents To Be Included in the Licensing Support Network," could be clarified, in addition to the item described in comment 7 above.

Specifically, the commenter noted that Items 8.12 and 8.13 indicate that public and agency comments on documents and responses to comments are to be included in the LSN. The commenter stated that it interprets these items to be specific to those public and agency comments received by DOE in response to a DOE request for comments (e.g., comments on the draft Yucca Mountain environmental impact statement or the Secretary of Energy's consideration of site recommendation). In addition, the commenter noted that Items 8.16 and 8.17 indicate that DOE project-decision schedules and program-management documents are to be included in the LSN. The commenter suggested that further clarification is appropriate to help identify documents covered by these categories.

Response 8. Items 8.12 and 8.13 (now Items 7.13 and 7.14) encompasses public comments by agencies, including by the DOE, that are relevant to the licensing of a repository at Yucca Mountain or bear on a party's position in the proceeding. The DOE, as the developer of a potential Yucca Mountain repository, is required by section 114(e) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10134(e), to prepare a project decision schedule and is in the best position to identify documents encompassed by Items 8.16 and 8.17 (now Items 7.17 and 7.18). Further clarification is not necessary.

Comment 9. The commenter recommended that the term "relevant" be clarified in the regulatory guide, because it is used in the 10 CFR 2.1001 definition of documentary material and its clarification would be beneficial to all parties. Because it is the general practice of the Commission to follow the Federal Rules of Civil Procedure, the commenter recommended that the term be interpreted in light of Rule 26 of the Federal Rules of Civil Procedure and case law interpreting it.

Response 9. The term "relevant" does not need clarification in the regulatory guide. The regulatory guide includes the 10 CFR 2.1001 definition that was promulgated in 1998 (see 63 FR 71729,

71736–71737, December 30, 1998). The NRC has previously indicated that relevance is defined in terms of whether documentary material (1) has any possible bearing on a party's supporting information or a party's position in a proceeding or (2) is a report or study that has a bearing on the license application and any of the Topical Guidelines in Regulatory Guide 3.69. See 66 FR 29453, 29460 n.3. (May 31, 2001).

Comment 10. The commenter requested additional guidance on how potentially sensitive documents are to be handled in the LSN, because 10 CFR 2.790 and 10 CFR 2.1003(a)(4)(iii) do not cover all potentially sensitive information, such as sensitive homeland security information.

Response 10. Subsequent to receipt of this comment, the NRC revised 10 CFR Part 2 (69 FR 2182, January 14, 2004), and 10 CFR 2.790 is now 10 CFR 2.390. The purpose of the regulatory guide is to identify the scope of documentary that should be identified in or made available via the LSN. The regulatory guide also indicates that certain documents may be excluded or withheld from disclosure under 10 CFR 2.1003, 2.1005, and 2.1006. Under 10 CFR 2.1003(a)(4) documents withheld from disclosure are to be identified by a LSN bibliographic header only (for example, safeguards, privileged, or confidential financial information). No additional guidance is necessary. (5 U.S.C. 552(a))

Dated at Rockville, MD this 23rd day of June, 2004.

For the Nuclear Regulatory Commission.

John W. Craig,
Deputy Director, Office of Nuclear Regulatory Research.

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OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 30– 10

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30–10,