

COMPLIANCE DETERMINATION STRATEGY

RRT 1.4 CERTIFICATION OF SAFEGUARDS

APPLICABLE REGULATORY REQUIREMENTS:

10 CFR 60.21(b)(3)
10 CFR 60.31(b)

TYPES OF REVIEW

Acceptance Review (Type 1)
General Information Review (Type 2)

RATIONALE FOR TYPES OF REVIEW:

Acceptance Review (Type 1) Rationale:

This regulatory requirement topic is considered to be license application-related because, as specified in the license application content requirements of 10 CFR 60.21(b) and Section 1.4 of the regulatory guide "Format and Content for the License Application for the High-Level Repository (FCRG)," it must be addressed by the U.S. Department of Energy (DOE) in its license application. Therefore, the staff will conduct an Acceptance Review of the license application for this regulatory requirement topic.

General Information Review (Type 2) Rationale:

This regulatory requirement topic is related to general information required by 10 CFR 60.21(b). It is a requirement for which compliance is necessary to make a determination for construction authorization, as defined in 10 CFR 60.31(b). Therefore, the staff will conduct a General Information Review of the license application to determine compliance with the applicable regulatory requirements.

This regulatory requirement topic focuses on DOE providing a certificate that it will provide such safeguards at the geologic repository operations area (GROA) as it requires at comparable surface facilities in order to promote the common defense and security. The scope of DOE's certification of safeguards is clarified in the statements of consideration for the final rule (see NRC, 1981; 46 FR 18971). The certification should note the elements of DOE's plans for the protection of classified information and materials, and for the protection against the loss, theft, or diversion of nuclear materials. This plan must be described in a separate part of the license application and must be withheld from public disclosure, pursuant to 10 CFR 2.790(d). 10 CFR 2.790 and 60.21(a) address nondisclosure of items that must be kept secret in the interest of national defense. The information provided in this certificate should be adequate to assure common defense and security, as the Commission has determined that any licensed materials at the GROA are not attractive targets for theft or diversion, and that DOE, acting under the same Atomic Energy Act authority as the Commission, has provided adequate safeguards at facilities where HLW (including spent nuclear fuel) has been handled and stored.

There appears to be no lack of certitude as to the methodology needed to determine or demonstrate compliance with this regulatory requirement topic. Factors considered in making this determination are based upon past experience in similar nuclear operations and the knowledge that technology exists to protect and safeguard nuclear material until permanent closure.

REVIEW STRATEGY:

Acceptance Review:

In conducting the Acceptance Review of this regulatory requirement topic, the reviewer should determine if the information presented in the license application for demonstrating compliance with the applicable regulatory requirements is complete in technical breadth and depth as identified in Section 1.4 of regulatory guide "Format and Content for the License Application for the High-Level Repository (FCRG)." The reviewer should determine whether all appropriate information necessary for the staff to review the safeguards certification is provided such that the assessments required by the regulatory requirements can be performed.

Finally, the reviewer should determine if the U.S. Department of Energy (DOE) has either resolved all NRC staff objections related to the applicable regulatory requirements or provided all the information requested in Section 1.6.2 of the FCRG, for the resolution of unresolved objections. The reviewer should evaluate the effects of any unresolved objections, both individually and in combinations with others, on: (1) the reviewer's ability to conduct a meaningful and timely review; and (2) the Commission's ability to make a decision regarding construction authorization within the statutory three-year period.

General Information Review:

This regulatory requirement topic is limited to common defense and security considerations at the geologic repository operations area (GROA). It concerns DOE's safeguards plans and procedures intended to provide for the protection of classified information and material, and for the protection of nuclear materials against theft or diversion.¹ The certificate provided by DOE in its license application is intended to provide confidence that it can receive, possess, and dispose of the radioactive materials in its possession in a manner that it will assure common defense and security. This regulatory requirement topic is not concerned with the related subjects of radiological sabotage or nuclear material accountability. These subjects will be addressed separately in Sections 1.5 and 2.7 ("Physical Security Plan" and "Nuclear Material Control," respectively) of the license application and its attendant review plans. The DOE certification that it will provide such safeguards at the GROA, as it requires at comparable DOE facilities, will constitute a rebuttable presumption of noninimicality for common defense and security.

In conducting the General Information Review, the reviewer should determine if the information presented in the license application and its references is an acceptable demonstration of compliance with the applicable regulatory requirements. The reviewer should assess the adequacy of the analyses and plans presented in the license application to support DOE's demonstration of compliance with 10 CFR 60.21(b)(3). The specific aspects of the license application on which a reviewer will focus are discussed below, and the Acceptance Criteria are identified in Section 3.0 of this review plan. The DOE is

¹ DOE's plans and procedures may be conceptual in nature at the construction authorization stage; the final design details will be found in any subsequent application to receive and emplace waste.

expected to identify facilities that it considers to be comparable and to identify the principal elements of those security and safeguards measures that are used to provide for common defense and security. For each of those elements, DOE should certify that it will provide equivalent measures or, alternatively, it should explain any deviations in a manner that demonstrate adequate promotion of common defense and security. Deviations may reflect differences in the sensitivity of materials at the GROA to theft and diversion concerns.

The reviewer should determine if DOE has provided in its certificate the information specified above. Any classified information concerning DOE's plans will be separated from unclassified information, as provided in 10 CFR 60.21(a).

In order to conduct an effective review, the reviewer will rely on staff expertise and independently acquired knowledge, information, and data, in addition to that provided by DOE in its license application. For example, the reviewer should have knowledge and experience in the area of common defense and security for nuclear facilities. It is incumbent upon the reviewer to have acquired a body of knowledge regarding these and other critical considerations in anticipation of conducting the review to assure that the safeguards certification is sufficient.

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APPLICABLE REGULATORY REQUIREMENTS FOR EACH TYPE OF REVIEW:

Type 1:

10 CFR 60.21(b)(3)
10 CFR 60.31(b)

Type 2:

10 CFR 60.31(b)

REFERENCES:

Nuclear Regulatory Commission, "Disposal of High-Level Radioactive Waste in Geologic Repositories: Licensing Procedures [Final Rule]," *Federal Register*, Vol. 46, No. 37, February 25, 1981, pp. 18971-18987.

Nuclear Regulatory Commission, "Format and Content For the License Application for the High-Level Waste Repository," Office of Nuclear Regulatory Research. [Refer to the "Products List" for the Division of High-Level Waste Management to identify the most current edition in effect.]

Code of Federal Regulations, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," Part 2, Chapter I, Title 10. "Energy."

Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 (1954), Pub. L. 83-703, 68 Stat. 919.