

Dear FOIA Requester:

The FOIA Improvement Act of 2016, which was enacted on June 30, 2016, made several changes to the Freedom of Information Act (FOIA). Federal agencies must revise their FOIA regulations to reflect those changes by December 27, 2016. In addition to revising our regulations, we intend to update the Form 464, which we use to respond to FOIA requests.

In the interim, please see the comment box in Part I.C of the attached Form 464. The comment box includes information related to the recent changes to FOIA that is applicable to your FOIA request, including an updated time period for filing an administrative appeal with the NRC.

Sincerely yours,

*Stephanie Blaney /S/*

Stephanie Blaney  
FOIA Officer (Acting)



# RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

2016-0567

1

RESPONSE TYPE

INTERIM

FINAL

REQUESTER:

Julian Tarver

DATE:

08/24/2016

**DESCRIPTION OF REQUESTED RECORDS:**

(1) Memorandum of Understanding (MOU) between NRC and DOJ dated 12/14/1988; (2) Memorandum from Stephen Burns to the Commission dated 09/06/2005, "Status of Case Law related to Employee Protection Actions; (3) SECY 04-0092, and (4) SECY 92-314.

### PART I. -- INFORMATION RELEASED

- Agency records subject to the request are already available in public ADAMS or on microfiche in the NRC Public Document Room.
- Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

### PART I.A -- FEES

AMOUNT\*

\$

\*See Comments for details

You will be billed by NRC for the amount listed.

None. Minimum fee threshold not met.

You will receive a refund for the amount listed.

Fees waived.

### PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- You may appeal this final determination within 30 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal."

### PART I.C COMMENTS ( Use attached Comments continuation page if required)

In conformance with the FOIA Improvement Act of 2016, the NRC is informing you that: (1) you have the right to seek assistance from the NRC's FOIA Public Liaison; (2) you have the right to seek dispute resolution services from the NRC's FOIA Public Liaison or the Office of Government Information Services; and (3) notwithstanding the language in Parts I.B and II.B of this form, you may appeal this final determination within 90 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal." [continued on next page]

SIGNATURE - FREEDOM OF INFORMATION ACT OFFICER

Nina Argent, Acting

2016-0567

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**RESPONSE TO FREEDOM OF INFORMATION  
ACT (FOIA) REQUEST Continued**

RESPONSE  
TYPE

INTERIM

FINAL

REQUESTER:

Julian Tarver

DATE:

08/24/2016

**PART I.C COMMENTS (Continued)**

The incoming request will be made available in ADAMS as ML16188A022. Records with an ML accession number are publicly available in the NRC's Public Electronic Reading Room at <http://www.nrc.gov/reading-rm.html>. If you need assistance in obtaining these records, please contact the NRC's Public Document Room (PDR) at 301-415-4737, or 1-800-397-4209, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

Please note that the MOU between the Department of Justice and the NRC is already available to the public, as it was published in the Federal Register, 53 FR 50317 (December 14, 1988). Please also note that SECY-92-314 is also already available to the public as ML12163A426.



**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST**

2016-0567

DATE:

08/24/2016

**PART II.A -- APPLICABLE EXEMPTIONS**

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
  - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
  - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
  - 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
  - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
  - The information is considered to be another type of confidential business (proprietary) information.
  - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
  - Deliberative process privilege.
  - Attorney work product privilege.
  - Attorney-client privilege.
- Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
  - (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
  - (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
  - (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
  - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
  - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- Other

**PART II.B -- DENYING OFFICIALS**

In accordance with 10 CFR 9.25(g) and 9.25(h) of the U.S. Nuclear Regulatory Commission regulations, the official(s) listed below have made the determination to withhold certain information responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL	
			EDO	SECY
Rochelle Baval	Executive Assistant to the SECRETARY	adjudicatory work product; legal advice	<input type="checkbox"/>	<input checked="" type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>

Appeals must be made in writing within 30 calendar days of the date of this response by sending a letter or email to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, or [FOIA.Resource@nrc.gov](mailto:FOIA.Resource@nrc.gov). Please be sure to include on your letter or email that it is a "FOIA Appeal."

# MOU Between the NRC and DOJ

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This document reflects the Memorandum of Understanding (MOU) between the NRC and the Department of Justice (DOJ) that was published in the Federal Register on December 14, 1988.

53 FR 50317  
Published 12/14/88  
Effective 11/23/88

## **I. Purpose:**

The Nuclear Regulatory Commission (NRC) and the Department of Justice (DOJ) enter into this agreement 1) to provide for coordination of matters that could lead both to enforcement action by the NRC as well as criminal prosecution by DOJ, and 2) to facilitate the exchange of information relating to matters within their respective jurisdictions. This agreement does not affect the procedures and responsibilities set forth in the April 23, 1979 Memorandum of Understanding between the NRC and the Federal Bureau of Investigation regarding cooperation concerning threats, theft, or sabotage in the U.S. nuclear industry. Similarly, this agreement does not apply to those matters arising from internal investigations conducted by the NRC Office of Inspector and Auditor.

This Memorandum of Understanding is not intended to, does not, and may not be relied upon to, create any rights or benefits, substantive or procedural, enforceable at law by a party to litigation with the United States. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of DOJ.

## **II. Background:**

Under federal statutes, the NRC has the responsibility to protect the radiological health and safety of the public, the public interest, the common defense and security, and the environment (hereinafter collectively referred to as public health and safety), from hazards that might arise from the material and facilities which it regulates. The enforcement program of the NRC is designed to fulfill these responsibilities by ensuring compliance with NRC requirements, obtaining prompt correction of violations and adverse conditions affecting safety, encouraging improvement of licensee performance, and deterring future violations. In contrast, criminal prosecutions for willful violations of NRC requirements are the responsibility of the DOJ. Such prosecutions provide an additional tool to assure compliance and to deter future violations. Therefore, it is useful and desirable for the NRC and the DOJ to coordinate to the maximum practicable extent their different responsibilities.

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to conduct such investigations as it may deem necessary or proper to assist it in determining whether enforcement or other regulatory action is required under the Act, or any regulations, licenses, or orders issued thereunder.

Enforcement actions within NRC authority include license revocations, suspensions and modifications, cease and desist orders, civil penalties, and notices of violation. The NRC has the authority to take such action as it deems necessary to protect the public health and safety, including the authority, when appropriate, to take immediate action.

The Department of Justice has the responsibility to determine whether to institute criminal prosecution for violations of all federal statutes, including the Atomic Energy Act of 1954, as amended. Such violations are typically developed and brought to the attention of DOJ by law enforcement or investigative agencies, such as the Federal Bureau of Investigation, the Postal Inspection Service, and the various Treasury enforcement agencies. Similarly, suspected criminal violations of the Atomic Energy Act, as amended, or Title 18 of the United States Code may be identified during the course of NRC investigations and referred to DOJ for prosecutive determination.

Thus, both the NRC and DOJ have authority and responsibility to investigate and take action for certain violations that may arise out of the same factual matters. Although each agency will carry out its statutory responsibilities independently, the agencies agree that the public health and safety would be enhanced by cooperation and timely consultation on proposed enforcement actions where both civil and criminal violations appear to exist, and by the timely exchange of information of mutual interest. As an example, it may be appropriate in some cases for the NRC to stay its hand pending a criminal prosecution. Conversely, in other cases the public health and safety may require immediate NRC action that could impact a potential criminal prosecution. Both agencies recognize that these enforcement decisions are inherently matters of judgment for each agency to decide for itself, with due regard, however, for the views of the other.

### **III. Areas of Cooperation:**

#### **A. DOJ Notification to NRC of Information Concerning Public Health and Safety**

Should DOJ learn of or discover health or safety related information concerning a matter within the jurisdiction of the NRC, and not already reasonably known to the NRC, DOJ shall communicate such information to the NRC as soon as practicable, unless such information is determined by DOJ to be grand jury material. See Rule 6(e) of the Federal Rules of Criminal Procedure.

Should DOJ, during grand jury proceedings, discover health or safety related information concerning a matter within the jurisdiction of the NRC, and not already reasonably known to the NRC, which may warrant immediate regulatory action to protect the public health and safety, DOJ promptly will seek a court order, pursuant to the inherent authority of the court to supervise the grand jury, for disclosure of such information to the NRC for use in connection with its safety enforcement responsibilities.

#### **B. NRC Notification to DOJ of Suspected Criminal Violations**

If NRC learns of or develops information regarding suspected criminal violations on matters not within the regulatory jurisdiction of the NRC, the NRC will provide the information regarding such suspected criminal violations to the appropriate investigative agency having jurisdiction over the matter.

Should NRC learn of or develop information regarding any suspected criminal violations, including Atomic Energy Act violations, on matters within the regulatory jurisdiction of NRC, it will notify DOJ in the following manner. With respect to matters not involving special circumstances, as described below, the NRC's Director, Office of Investigations (OI), will formally refer the matter to DOJ for prosecutive determination if, on completion of its investigation, the Director, OI, has determined that sufficient evidence has been developed to

support a reasonable suspicion that a criminal violation has occurred. Whenever any of the special circumstances listed below occurs, and the Director, OI, has a reasonable suspicion that a criminal violation has occurred, the Director of OI will promptly notify the DOJ of a matter involving such special circumstance(s), notwithstanding the fact that an investigation has not yet been completed by NRC. The special circumstances involve:

- (1) a matter where death or serious bodily injury is involved;
- (2) a matter under investigation which is likely to generate substantial national news media attention;
- (3) a matter where there is evidence of ongoing activity designed to obstruct the investigation;
- (4) a matter which may require extraordinary investigative measures which require legal assistance from DOJ.

When a matter arises in which the NRC concludes that regulatory action is necessary to protect the public health and safety, or that it is necessary to propose a civil penalty, and the Director, Office of Enforcement (OE), has been informed by the Director, OI, that there is a reasonable suspicion that a criminal violation has occurred, the Director of OE will promptly notify the DOJ of such matter, notwithstanding the fact that an investigation has not yet been completed by NRC. Any action by the NRC is to be coordinated with DOJ as prescribed in Section C. below.

Notification to DOJ will not normally result in cessation of the NRC investigation.

**C. Procedure When NRC Regulatory Activities Run Parallel to or May Affect Future DOJ Activity**

NRC regulatory activities with respect to matters that have been referred to DOJ for criminal prosecution, or to which the notification provisions of Section B. apply, shall be coordinated as follows:

1. If the NRC concludes at any time that it lacks reasonable assurance that activities authorized by a license are being conducted without endangering the health and safety of the public and the NRC concludes that immediate action is required to protect the public health, safety, or interest, it will proceed with such action as is necessary to abate the immediate problem. If time permits, the NRC shall notify DOJ of its proposed action prior to acting, but, in any event, shall notify DOJ of its action as soon as practicable. This paragraph shall apply only to those situations that do not allow sufficient time for reasonable consultation.

2. If the NRC concludes that regulatory action is necessary in the public interest, other than the actions described in paragraphs 1 and 3 herein, the NRC shall first consult with DOJ concerning its contemplated action. The NRC shall take into account the views and concerns of DOJ and proceed in a manner that accommodates such views and concerns to the fullest extent possible, consistent with the regulatory action required. Such cooperation at the staff level shall include the seeking of a stay, upon DOJ's request, of discovery and hearing rights during the regulatory proceeding for a reasonable period of time to accommodate the needs of a criminal investigation or prosecution, provided that DOJ supports such action with appropriate affidavits or testimony as requested by the presiding officer.

3. If the NRC concludes that it is necessary to propose a civil penalty, it shall notify DOJ of its contemplated action, and shall defer the initiation of such proceeding until DOJ either concludes its criminal investigation/prosecution or consents to the action, except that if a statute

of limitations bar to a civil penalty proceeding is imminent, the NRC may initiate such proceeding after consultation with DOJ. In such event, the NRC staff shall accommodate the needs of DOJ by seeking a stay, upon DOJ's request and with DOJ support as described in paragraph 2 above, of discovery and hearing rights during the civil penalty proceeding for a reasonable period of time.

#### **D. Time Frame for Notification in Matters Referred to DOJ**

1. If, on completion of its investigation, the NRC concludes that civil enforcement action is appropriate, it will notify DOJ of its contemplated action normally within 45 days of its referral to DOJ.

2. DOJ will notify the NRC, normally within 60 days of the referral, of its preliminary decision as to whether a criminal investigation or prosecution is warranted.

#### **E. NRC Assistance to DOJ**

The NRC will make reasonable efforts, at DOJ's request, to provide informal assistance regarding applicable NRC requirements, technical issues, and factual circumstances. Such assistance should be requested directly from the Director, Office of Investigations, who will forward requests for technical assistance to the Deputy Executive Director for Regional Operations. A request that one or more NRC investigators be assigned to the DOJ investigation or that NRC technical experts be assigned to assist DOJ and the grand jury should be made in writing. Such requests must bear the signature of a United States Attorney or Deputy Assistant Attorney General, as appropriate. These requests will be considered by NRC on a case-by-case basis.

#### **F. Exchange of Information Related to Civil or Criminal Enforcement**

Following a DOJ decision not to prosecute a referred case, or at the conclusion of a criminal proceeding, DOJ will provide NRC, upon its request, information not protected from disclosure by Rule 6(e), Fed.R.Crim.P., relevant to the associated civil case. Similarly, NRC will provide information to DOJ, upon its request, on matters being considered by DOJ.

#### **IV. Implementation:**

The DOJ official responsible for implementation of the notification responsibilities of this agreement is the Chief, General Litigation and Legal Advice Section, Criminal Division; the NRC official responsible for implementation of the notification responsibilities of this agreement with respect to information regarding suspected criminal violations is the Director, Office of Investigations; the NRC official responsible for the notification responsibilities of this agreement with respect to enforcement action is the Director, Office of Enforcement, or the Assistant General Counsel for Enforcement, as appropriate.

**V. Effective Date:**

This agreement is effective when signed by both parties.

Original Signed by  
Lando W. Zech, Jr.

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Chairman  
U.S. Nuclear Regulatory Commission

Date: October 31, 1988

Original Signed by  
Edward S.G. Dennis

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Assistant Attorney General General  
Criminal Division  
U.S. Department of Justice

Date: 11/23/1988

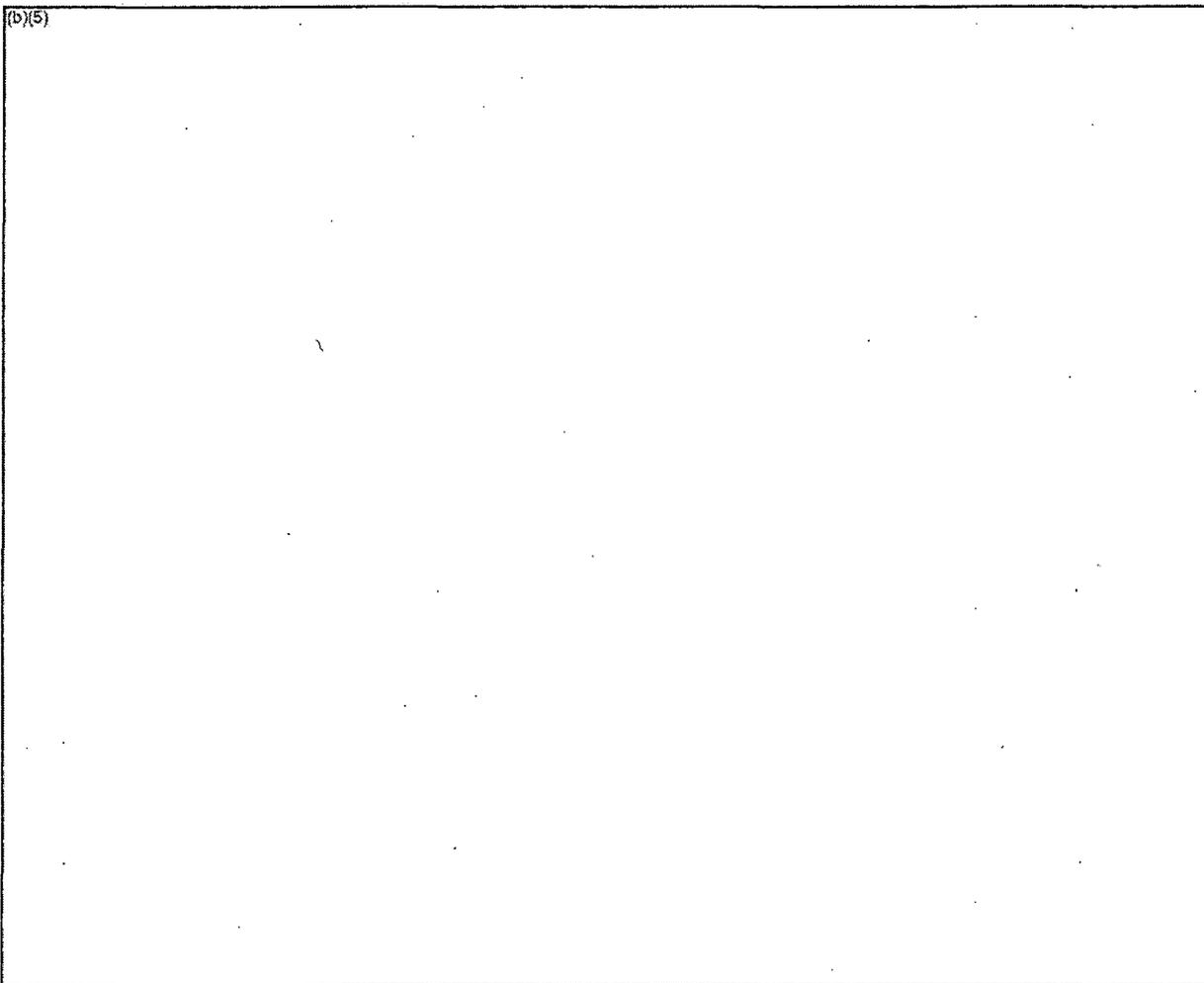
September 6, 2005

MEMORANDUM TO: Chairman Diaz  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons

FROM: Stephen G. Burns/*RA*/  
Acting General Counsel

SUBJECT: STATUS OF CASELAW RELATED TO EMPLOYEE  
PROTECTION ACTIONS - SECY-04-0092 (August 18, 2004)

(b)(5)



~~NOTE: ATTORNEY-CLIENT DOCUMENT  
LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE~~

Memorandum from Stephen Burns to  
Commission, dated 09/06/2005

The remaining 3 pages are withheld in  
their entirety on the basis of FOIA  
exemption 5

**ADJUDICATORY ISSUE**  
(Affirmation)

June 4, 2004

SECY-04-0092

**FOR:** Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield

**FROM:** John F. Cordes, Director  
Office of Commission Appellate Adjudication /RA/

**SUBJECT:** TENNESSEE VALLEY AUTHORITY (Watts Bar Nuclear Plant, Unit 1, Sequoyah Nuclear Plant, Units 1 & 2, Browns Ferry Nuclear Plant, Units 1, 2 & 3), Docket Nos. 50-390-CivP; 50-327-CivP; 50-328-CivP; 50-259-CivP; 50-260-CivP; 50-296-CivP; LBP-03-10 (June 26, 2003)

**PURPOSE:**

(b)(5)

**BACKGROUND:**

This case arises out of an NRC Staff order imposing a \$110,000 civil penalty against TVA. The Staff's order found that TVA had violated NRC's whistleblower protection regulation, 10 C.F.R. § 50.7, by retaliating against an employee, Gary Fiser, for having engaged in protected activity. Following an evidentiary hearing, a split Licensing Board issued an 83-page initial decision sustaining the Staff's civil penalty order but reducing the penalty amount to \$44,000. LBP-03-10, 57 NRC 553 (2003). (Judge Young dissented.) TVA sought and was granted Commission review of the Board's order. CLI-03-09, 57 NRC 39 (2003).

(b)(5)

~~NOTE: ADJUDICATORY MATERIAL, LIMITED TO NRC UNLESS COMMISSION DETERMINES OTHERWISE.~~

SECY-04-0092

The remaining 172 pages are withheld  
in their entirety on the basis of FOIA  
exemption 5



**POLICY ISSUE**  
**(Notation Vote)**

September 10, 1992

SECY-92-314

**For:** The Commissioners

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

**Subject:** CURRENT LICENSING BASIS FOR OPERATING PLANTS

**Purpose:** To respond to Commission staff requirements memoranda (SRM) regarding compiling the current licensing basis (CLB) and determining the industry's methods for updating the final safety analysis reports (FSARs).

**Summary:** On November 29, 1991, the Commission requested information and recommendations from the staff concerning compilation of the CLB and current industry practices in updating the FSAR. To ensure that design changes and modifications, safety evaluations, and operability determinations are properly carried out, the licensee must be able to retrieve docketed correspondence on a system or topic that might contain CLB information, find the CLB within the documents, and use the CLB effectively. The staff will use its regulatory oversight programs to ensure licensees are preserving the underlying safety interest of the CLB.

No licensee has volunteered to compile their CLB, although two licensees have volunteered to demonstrate the adequacy of their document search and retrieval systems. As a result, the staff recommends ending the program for volunteers to compile the CLB. The staff also recommends that compilation of the CLB within a single document not be required and that the interpretation of the FSAR update rule should not be revised at this time to include the entire CLB. The staff will evaluate the need for revisions to

9209150373 920910  
CF SECY  
92-314 CF

CONTACT:  
Ricky Twigg  
504-1312

SECY NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM  
IS MADE AVAILABLE. DESIGNATED ORIGINAL

Certified By:   *g j*

current regulations to ensure that the processes for effective management of the CLB, the FSAR, design basis, docketed correspondence, and plant records are complete and clear.

Background:

Responding to the Commission's direction, the staff issued Generic Letter (GL) 92-03, "Compilation of the Current Licensing Basis: Request for Voluntary Participation in a Pilot Program," March 19, 1992. The staff also conducted audits of the FSAR on specific issues (e.g., anticipated transient without scram (ATWS), Three Mile Island (TMI) requirements) at 14 sites to determine the way in which licensees update their FSARs and the relationship between the updated FSAR and the CLB. Enclosure 1 is a report on these audits, and Enclosure 2 is a summary of a 2-day workshop for representatives of the utilities. Enclosure 3 is the definition of CLB contained in 10 CFR 54.3.

Discussion:

The following information responds to the specific requests and direction in the SRM of November 29, 1991:

Item 1

Solicit industry participants in a pilot program in which a small number of representative volunteer-licensees would compile their CLB and advise the NRC on the advantages and disadvantages of such an effort.

Assess the usefulness of the compiled CLBs for the licensees' operations and the NRC's regulation of those plants.

Make recommendations to the Commission on the usefulness of the CLB compilation for all operating plants.

To bound the pilot program, the staff needed definitions for both "CLB" and "compilation." The definition of CLB in 10 CFR 54.3, which applies only to license renewal, was used to bound the scope of the CLB for the pilot program. CLB is mentioned in 10 CFR 50.54(f); however, there is currently no definition of CLB in 10 CFR Part 50. Defining CLB for 10 CFR Part 50 will be part of a coordinated evaluation of possible rule changes discussed later in this paper. In GL 92-03, the staff defined "compilation" as a single set of documents in one location or a system that references documents that can be retrieved easily from several locations.

Either a single set of documents in one location containing and identifying all the CLB or a system that references such documents for the plant would require a large initial investment of resources and time to research the complete docket and find all the CLB. This single set of documents or system that references such documents will be referred to as the CLB document. For the CLB document to be effective,

it must have a complete system of cross references and the licensee's staff must be able to adequately use it. In the long term, this CLB document might lose its effectiveness unless the staff maintaining it could find the CLB within new correspondence, extract it and appropriately file it within the CLB document so that it could be retrieved when needed. No licensee has volunteered for this type of compilation. However, Southern California Edison and Baltimore Gas and Electric have volunteered to demonstrate the adequacy of their document search and retrieval systems.

From the audit, the staff found that most licensees have recognized the benefits that could be obtained from a well managed CLB. The industry seeks to improve its management of the CLB by improving the various processes for retrieving the documents containing the CLB, finding the CLB within the documents, and using the CLB effectively. The staff refers to these processes collectively as a CLB process.

The difference between the licensees' CLB process and the single CLB document is that the licensees use the CLB process to maintain the documents containing the CLB (i.e., the docket) and extract the CLB when needed. However, to establish the CLB document, the licensee would need to extract the CLB from or identify the CLB within all documents before finding a need.

Efficient and effective management of the CLB process will benefit the licensee and the NRC by:

- promoting plant safety by enhancing the licensee's ability to resolve operability issues and concerns and to prepare corrective actions and by ensuring maintenance and modifications to the facility and its programs are made within the bounds of the CLB.
- establishing a common framework for interaction between the industry and the NRC on safety issues, thereby optimizing regulatory oversight, responses to events, and routine inspection and reviews, and increasing NRC's confidence in the licensee's capability to preserve the safety basis of the plant; and
- conserving the licensee's and the NRC's resources.

The large volume of documents that contain the CLB, including NRC requirements and the licensee's commitments to the NRC, also contain general information that is not in the CLB. All audited licensees appeared to be able to retrieve documents containing the CLB for specific issues, such as ATWS, because a separate subject file is usually maintained; however, their ability to determine which documents contain the CLB pertinent to a specific modification of a design,

component, or program varies according to the sophistication of their document retrieval methods and their ability to find commitments within those documents. The document retrieval methods can be grouped in two distinct but acceptable ways, each with its advantages and disadvantages.

One method consists of maintaining paper files that are searched manually. This method may include limited text (synopsis) electronic search systems such as NUDOCs, which primarily support the manual search process. The licensee's staff must expend much effort retrieving the CLB for a particular application, since it must store, track, search, and reference large volumes of documents for which it has few or no cross references. This method requires a large staff to be effective.

The second method consists of maintaining electronic or laser disk storage systems containing all docketed correspondence, the FSAR, and, in some cases, the design basis documents (DBDs). The documents are stored electronically, which enables the licensee to maintain central control of data, speed access, and speed searches for the specific CLB. Most licensees in the FSAR audit and the CLB Workshop are using computer information management systems for document retrieval to some degree. Although the licensees using the second method need fewer staff, the staff must be skilled in the proper use of search capabilities to ensure the search is valid and thorough.

Once the documents are retrieved, the licensee must find the licensing basis within the documents. The staff found that various members of the licensees' organizations differ over the interpretation of the definition of "commitment." During the audits and the workshop, various licensees stated that their ability to determine which statements constitute a "commitment" is limited by the lack of a clear definition and that additional guidance would assist in applying that definition.

To complete the CLB process, the licensee must effectively use the portions of the CLB that it has found. In conducting the FSAR audit, the staff found indications of insufficient procedural requirements to ensure the CLB and the CLB process are used when implementing design changes and modifications, conducting safety evaluations, and determining operability.

The staff recommends ending the formal pilot program because the pilot has not attracted any volunteers to compile their CLB. The staff does not recommend a new requirement that would result in CLB compilation for all plants. The licensee's CLB process can be acceptable to the NRC with proper attention to the vulnerabilities of the methods used. The staff will continue to encourage licensees to improve

the processes by which they retrieve, find and use the CLB and will support any licensee's improvements as may be appropriate. NRR expects to gain sufficient knowledge from these efforts to write guidance for our activities to oversee the acceptability of CLB control and use.

Item 2

Determine how licensees are responding to the requirement in 10 CFR 50.71 for annual updates to their FSARs to ensure that the information included in the FSAR contains the latest material developed.

Determine whether and how the annual updates to the FSAR fall short of describing the licensee's CLB.

Explore the option and the advantages and disadvantages of revising the interpretation currently given to 10 CFR 50.71 to include the CLB.

As allowed by the update rule, 10 CFR 50.71(e), most licensees conduct updates annually and take up to 6 months before revising the available paper copies of the FSAR accordingly. The current annual update requirements allow the docketed FSAR to be as much as 18 months out of date. A proposed rule change currently under consideration to extend the update interval to once every refueling outage would result in the docketed FSAR being as much as 30 months out of date. Some of the licensees recognize a need for more timely updates so that the document is more useful to their staff. The licensees who maintain the FSAR in an electronic format for easy access and updates are beginning to make electronic copies available to their staff in lieu of continually printing paper updates to the docketed FSAR.

The statement of considerations published with the update rule in 1980 clearly defined the updated final safety analysis report (UFSAR) as containing or referencing all the new analyses the Commission required or requested of the licensees. However, the update rule states that the FSAR is to be revised to include "the effects of" all new analyses and modifications made to the plant as described in the FSAR. Most of the licensees audited have interpreted "effects of" to mean that the update need only include those changes that would create error in the existing FSAR. The licensees sometimes did more than merely correct errors, but included considerably less detail than was included in the analyses submitted to the NRC and usually did not include the new licensing basis. When new information is added, it is based on the licensee's judgement of significance and usually includes no greater detail than was included in the original operating license (OL) FSAR, which varies according to the year of issuance. Any references were usually to the NRC's initiating document, such as a generic letter or a new

rule, and not to the licensee's correspondence containing the analyses or commitments.

During the audits, the staff found that the FSARs, at the time of licensing, usually contain most of the plant-specific design basis as defined by 10 CFR 50.2. However, 10 CFR 50.71(e) does not include a specific reference to 10 CFR 50.2 and most of the new design bases and commitments made to the NRC after licensing to address generic letters, bulletins, enforcement actions, and license event reports (LERs) are not included in the FSARs.

Capturing all the analyses and CLB commitments in the FSAR would make the FSAR difficult to manage. Alternatively, referencing in the FSAR the documents containing the CLB may not improve the ability of the licensee to find or retrieve pertinent correspondence. Extracting the CLB from the correspondence and then adding it to the sections of the FSAR where appropriate would be an expensive effort for licensees and would yield little safety benefit over current retrieval systems used by most licensees.

The staff does not believe that the FSAR update rule as written can be interpreted to require that the FSAR include all the elements of the CLB. Moreover, current regulations do not ensure that the FSAR references all of the design bases (10 CFR 50.2) and do not provide a regulatory means to modify all of the elements (e.g., letter commitments) of the CLB. The staff will conduct a coordinated evaluation of possible revisions to the change rule (10 CFR 50.59) and the update rule (10 CFR 50.71(e)) to ensure that the FSAR, design basis documentation, docketed correspondence, and plant records are complete and to verify that the processes for controlling and using the CLB are clear.

#### FOUR ISSUES RELATED TO THE COMMISSION'S QUESTIONS

##### 1. No clear process is defined for making changes to the CLB (licensee commitments) that are not included in the FSAR

The licensee may make changes to the facility as described in the FSAR in accordance with 10 CFR 50.59. However, the NRC has not issued regulatory guidelines for changes to the CLB not contained in the UFSAR.

The NRC staff is not interested in revising 10 CFR 50.71(e) to include the entire CLB or to subject every change of a licensee's commitments to the requirements of 10 CFR 50.59. However, the staff is concerned that the licensees may not be consistent in controlling changes to those portions of the CLB outside of the FSAR.

If commitments are to be allowed to remain outside the FSAR, a change process must be devised and required of licensees

to ensure the underlying safety interest of the commitment is preserved. Accordingly, the staff plans to emphasize this matter in working with industry on developing guidance for implementing the requirements of 10 CFR 50.59 and on developing recommendations for a requirement (rule or rule change) to establish a change process for those portions of the CLB that may remain outside the FSAR. This change process, including reporting and approvals, must be consistent with the category of information and its safety significance. The staff will include this issue in the rule change evaluation.

2. No clear understanding exists for "design bases" in terms of its scope and its relationship to the CLB

During the CLB workshop, the staff found confusion among the licensees over "design bases" as defined by 10 CFR 50.2. This led to many questions on the scope of the term and its relationship to the CLB. The scope of design basis was discussed extensively in the context of design basis reconstitution. In NUREG-1397, "An Assessment of Design Control Practices and Design Reconstitution Programs in the Nuclear Power Industry," the staff defined a new term, engineering design bases, specifically for NUREG-1397. As stated in NUREG-1397, "engineering design bases are not limited to design features or considerations that are necessary to satisfy regulatory requirements." However, a definition of CLB satisfying regulatory requirements for operating reactors would be limited to plant-specific design basis information defined in 10 CFR 50.2. The industry has issued additional guidance on the scope of the design bases in conjunction with the continuing efforts to reconstitute the design bases; see NUMARC 90-12, "Design Basis Program Guidelines." The staff will continue to work with industry to ensure the design information is adequate and available.

3. No industry-wide agreement exists on a definition of CLB (i.e., licensee commitments) for operating reactors

There is no agreement throughout the industry on the interpretation of the definition of "commitment" in 10 CFR 54.3. During the CLB workshop, the industry discussed continuing initiatives to define "commitment". Some licensees see the separation of the information into licensing basis commitments and the details describing the implementation of the commitment as confusing at best. The staff will continue its efforts with industry to better define "commitment" for the CLB and consider this issue in evaluating any rule changes.

4. Accuracy of the docket with respect to the CLB

As a result of the differing interpretations and the lack of a clearly defined process for making changes to commitments

As a result of the differing interpretations and the lack of a clearly defined process for making changes to commitments outside the scope of 10 CFR 50.59, some licensees have not docketed changes made to some licensing basis commitments. This was a common conclusion by the NRC and the industry at the CLB workshop. The staff will address this issue in its continuing efforts with industry to develop guidance for implementing the requirements of 10 CFR 50.59 and will consider this issue in evaluating any rule changes.

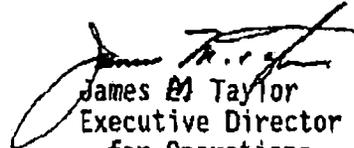
Followup Actions: In responding to the SRM, the staff has found that there is no definition of the CLB for operating reactors and no clear understanding of design bases and commitments in the CLB. Additionally, the change rule (10 CFR 50.59) applies only to the facility and procedures as described in the FSAR and to tests or experiments not described in the FSAR. Therefore, there is no requirement to ensure adequate process control of changes to commitments and design bases (10 CFR 50.2) that are not contained in the FSAR. Although the Design Basis Reconstitution Program contains engineering design bases that includes design bases (10 CFR 50.2), it is also not subject to the change rule. As a result of these findings, the staff will

1. work to define CLB for operating reactors
2. work to clarify the process for changing the FSAR and the CLB
3. work to clarify the definition of commitment and design bases in the CLB
4. increase emphasis on ensuring that licensee commitments on the docket are appropriately changed and that the changes are reflected on the docket
5. evaluate proposed changes to the following rules to ensure that the FSAR, design basis documentation, docketed correspondence, and plant records are complete and that the processes for controlling and using the CLB are clear
  - a. The rule for FSAR updates (10 CFR 50.71(e))
  - b. The change rule (10 CFR 50.59)
  - c. "Definitions," 10 CFR 50.2

The evaluation will include a regulatory and cost benefit analysis to justify the impact to both the NRC and the industry.

Recommendations: That the Commission

1. end the formal pilot program for compiling of the CLB
2. not require compilation of the CLB
3. not revise the interpretation of 10 CFR 50.71 to include the entire CLB at this time

  
James M. Taylor  
Executive Director  
for Operations

Enclosure 1: FSAR Audit  
Enclosure 2: Workshop  
Enclosure 3: Definition of CLB

Commissioners' comments or consent should be provided directly to SECY by c.o.b. Friday, September 25, 1992.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT September 18, 1992, with an information copy to SECY. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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Audit of Fourteen PlantsBACKGROUND

In November 1991, the Commission directed the staff (1) to determine how licensees are responding to the requirement in 10 CFR 50.71 for annual updates to the final safety analysis report (FSAR), (2) to ensure that the FSAR contains the latest material, and (3) to determine whether and how the annual updates to the FSAR fall short of describing the licensees' current licensing basis (CLB). The staff used the definition of CLB in Section 54.3 (see Enclosure 3) in its evaluation.

The staff obtained this information by visiting 14 licensees that represented a cross section of the industry. The plants visited were licensed between 1970 and 1987 and included plants of all reactor vendor types and from all regions, plants having computer systems for tracking commitments, and plants lacking such systems. The Attachment lists the plants audited and their profiles.

The staff visited each site and discussed plant-specific programs for updating the FSAR by examining, with the licensee, the resolution of selected issues through the update process. The licensee discussed its update process with the staff, and the staff audited each of the selected issues to confirm the overall discussions. The staff also observed computer systems used to track commitments, to search data for CLB information, or to store the FSAR for easy update, search, and retrieval.

The staff selected up to five of the following issues for each licensee:

automatic actuation of shunt trip attachment (W, B&W), GL 83-28

ATWS rule, 10 CFR 50.62

reliability of air systems, GL 88-14

safety parameter display systems, GL 89-06

instrumentation for inadequate core cooling, NUREG-0737

improved accident monitoring, Regulatory Guide 1.97

The issues expanded or further defined the licensing basis of the plants and required facility modifications or new systems. The staff did not focus on the technical adequacy of the issues but sought to understand the licensee's methodology and process for updating the FSAR and the extent to which the licensee incorporated or referenced the analyses from the issues in its updated FSARs (UFSARs).

AUDIT FINDINGS

The staff found that FSAR updates for the issues audited contain or reference only a small portion of the licensing basis added after 1980. The staff found that this resulted from the licensee's interpretations of 10 CFR 50.71e,

which states that the FSAR is to be revised to include "the effects of" all new analyses and modifications made to the plant as described by the FSAR. Most of the audited licensees interpreted "effects of" to mean that the update need include only changes that would create error in the existing FSAR. In the Statement of Considerations supporting 10 CFR 50.71(e), the Commission stated that "New analyses...may be incorporated...within the FSAR." These licensees interpreted this section to mean that if new analyses may be incorporated, they may also not be incorporated. The staff found that licensees seldom add entirely new information to the FSAR. The licensee adds new information upon determining its significance and usually includes no greater detail than was included for the original license. None of the audited licensees' updates included the full text of analyses or reference to all licensee correspondence containing the analyses. Any references included were usually to the NRC's initiating document such as a generic letter or new rule. Some partial updates of the FSAR included more than corrections for errors, but less than the analyses submitted to the NRC, and usually did not include the new licensing basis.

The staff found that the design basis as defined by 10 CFR 50.2 is not included in the UFSAR from analyses performed after 1980. This omission appears inconsistent with the definition of CLB in 10 CFR 54.3, where plant-specific design basis is that which is located in the most recent UFSAR.

The UFSAR is used primarily by the engineering staff for conducting design modifications and the related safety evaluations required by 10 CFR 50.59 to determine if it must obtain the NRC's approval before conducting tests or experiments; making plant design modifications; issuing licensing correspondence to support licensing amendments; and updating the FSAR as required in 10 CFR 50.71(e). Some licensees report using the FSAR for operability determinations, although the audit did not focus on this use. None of the licensees reported using the FSAR as a single document for any process, but each reported using the FSAR in conjunction with docketed correspondence, design basis documents, plant commitment tracking systems, and plant records. The licensees manage this information manually and, in varying degrees, by computer.

Some of the audited licensees reported that the procedures for the design change process include specific requirements to search the FSAR and docketed correspondence files for the applicable CLB. However, one of the audited licensees with a limited search capability did not have such requirements and relies entirely on the training and experience of its staff. This and other licensees with limited search capabilities and procedures may unknowingly modify the licensing basis, thereby compromising the CLB's underlying role in the safe operation of the plant.

Most licensees recognized that retrieval of the current licensing basis must include searches of both the FSAR and docketed correspondence. This creates additional questions about the validity of the search method, the thoroughness of the search, the recognition of the differences between the CLB and the design implementation details, and the access of licensee staff to the search method (especially computer systems), training, and the adequacy of procedures to ensure a proper search on the complete files (FSAR and docketed

correspondence). In its audit, the staff also continued to identify questions about the appropriate process by which the licensees change the various elements of the CLB: design basis as defined in 10 CFR 50.2 and commitments not contained in the FSAR.

The staff made the following general observations during the audit:

The detail included in an FSAR corresponds approximately to its size and age. The thickness of an FSAR produced by one architectural engineering firm ranged from 16 inches in 1974 to 99 inches in 1982, although the staff found no correlation between the architect-engineer and the amount of detail in an FSAR. The detail in the FSARs more than doubled from the 1970s to the 1980s.

Of the licensees audited, 85 percent have the UFSAR on searchable word processing systems, and almost all plan to upgrade to a searchable system and make it available to all site organizations.

Of the licensees audited, 80 percent update the FSAR only as needed to document the design modification and license amendment processes.

Of the licensee audited, 20 percent specifically review new rules, orders, generic letters, information notices, licensee event reports, enforcement actions, and confirmatory action letters to determine if they warrant FSAR updates. The licensees update their FSARs to incorporate information on reviews, plant modifications, and licensee amendment processes.

The audited licensee with the least dependable automated information system spent more than 2.5 times longer than the average licensee to search and retrieve the CLB for the issues audited.

### CONCLUSIONS

The FSAR is not a single reference document and may be overly relied upon by some to support significant activities. Portions of the CLB are located in various documents and places, requiring the licensees to assemble this information to support the audit. The staff's concern is that the processes used to retrieve, find and use the CLB may not be adequately defined for and understood by the licensee's staff. Inadequately managing the CLB may result in a failure to preserve the underlying safety interest of the CLB.

Attachment:  
UFSAR Audit

UPDATED FINAL SAFETY ANALYSIS REPORT  
AUDIT  
APRIL/MAY 1992

SITES AUDITED

SALEM  
BEAVER VALLEY  
CALVERT CLIFFS  
TMI AT GPU NUCLEAR  
ZION  
FORT CALHOUN AT OPPD  
WATERFORD  
GRAND GULF  
ARKANSAS AT GRAND GULF  
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2	V	1	'77		
		1	'81		
		2	'82		
		2	'85		

REPRESENTING ARCHITECT ENGINEERING FIRMS: S&L, BECHTEL,  
S&W, GIBBS, EBASCO, UE&C, AND THE LICENSEE.

WORKSHOP

The NRC held a current licensing basis (CLB) workshop on June 23 and 24, 1992, at the Holiday Inn, Crown Plaza, in Rockville, Maryland. Licensees participating in the FSAR audit and others requested the workshop to discuss the many questions about the licensing basis, updated final safety analysis reports (UFSARs), design bases, and the process for making changes to commitments. Views expressed by individuals on the topics were not taken as the licensees' or the NRC's positions unless expressly stated to be. The participants exchanged information and opinions to help the NRC form the recommendations to the Commission on the CLB and the FSAR update process.

Over 200 people attended the workshop, representing almost all utilities, NUMARC, the NRC, and numerous vendors. Along with the NRC staff, licensee representatives chaired and participated in seven panel discussions. The participants discussed the following topics.

1. Components of the Current Licensing Basis

Most of the workshop participants recognized that CLB is not a new concept; however, they did not all agree on the interpretation of the definition from 10 CFR 54.3. Most agreed that the documents containing the CLB (i.e., requirements and commitments to the NRC) can be ordered in a hierarchical fashion and that they include a large volume of information that is not in the CLB. They did not agree on a clear definition of "commitment." Some of the attendees saw the separation of the information into licensing basis commitments and details describing the implementation of the commitments as confusing at best.

The CLB definition in 10 CFR 54.3 includes only that information which is docketed and is in effect. Therefore, licensees must ensure that the docket accurately reflects the CLB. Licensees consider docketed correspondence to include portions of the CLB but questioned whether other information should be docketed that is considered a basis for licensing, such as operability decisions and justifications for continued operation. The NRC relies on much of this information, only some of which is docketed. The CLB also includes the plant-specific design basis, as defined in 10 CFR 50.2, as contained in the most recent UFSAR. In the FSAR audit (Enclosure 1), the staff established that the UFSARs do not include most of the post-licensing plant-specific changes to the design basis.

Licensees also questioned the definition of design basis in 10 CFR 50.2 for its practical application to design basis reconstitution, FSAR updates, and the processes by which a licensee may change the design basis.

2. The Significance and Use of the CLB

Participants made strong statements of opinion that compiling the CLB involves significant costs without commensurate benefit. However, they generally agreed that they benefit from retrieving and using the CLB when needed. The

form of the CLB and the process for maintaining it are not as important as the accuracy and availability of the CLB. Among other benefits noted, an efficient and effective CLB process will

- promote plant safety by
  - enhancing the licensee's ability (1) to resolve operability issues and concerns and (2) to prepare corrective actions, including interim actions that may be needed to avoid unwarranted plant shutdowns; and
  - ensuring that modifications to the facility and its programs are made with an awareness of their effect on the underlying safety interests;
- establish a common framework for interaction between the industry and the NRC on safety issues, thereby
  - optimizing regulatory oversight, responses to events, and routine inspection and reviews; and
  - increasing NRC's confidence in the licensee's capability to preserve the safety basis of the plant; and
- conserve the licensee's and the NRC's resources.

Participants asked about the NRC's needs regarding the CLB. One participant stated that the NRC inspector views the CLB as an essential starting point for inspection. The CLB is included within a large volume of documents with few cross references. Therefore, NRC inspectors and reviewers use the licensee's systems or seek the licensee's assistance in gathering desired information.

Another participant stated that, although the NRC is concerned that the CLB is maintained adequately, the licensee is responsible to meet the "contract" established by the CLB. Several participants believed the process for meeting this "contract" could be improved to simplify the license renewal process. Others saw the more immediate benefits of using the CLB in daily activities such as in evaluating changes to the plant, procedures, and programs and evaluating degraded and nonconforming conditions.

### 3. The Significance and Use of the USAR

Most of the participants agreed that the NRC staff relied extensively on the FSAR during the licensing process. Some stated that the licensee's staff also uses the FSAR to support daily activities such as plant design modifications and 10 CFR 50.59 reviews. Some participants stated that the level of detail in the FSAR was dictated by its use. These participants indicated that, while both the headquarters and the regional NRC staff use the FSAR, they also rely on docketed correspondence to verify the accuracy of the information.

In discussing the frequency of NRC-required FSAR updates, a few licensees recognized a need for their staff to use an FSAR that is updated frequently. These licensees typically maintain the FSAR in an electronic format for easy access and updating.

The staff learned that the scope and content of the FSARs varies widely within the industry. Thus, the licensees differ in the manner in which they apply 10 CFR 50.59 and in the level of detail included therein. To some degree, NSAC-125 serves as a standard for 10 CFR 50.59 evaluations by extending the applicability of this section to structures, systems, or components not described in the FSAR if the change to the structure, system, or component affects a larger structure, system, or component described in the FSAR. This standard directs the licensees to safety evaluation reports (SERs) and safety analysis reports (SARs) that contain the acceptability criteria for the probabilities, consequences, and margins of safety. This information is in the docketed correspondence for a facility if not located in the FSAR.

#### 4. The Significance and Use of the Design Basis Reconstitution Efforts

The design basis document (DBD) programs defined by 10 CFR 50.2 encompass approximately 80 percent of the CLB. Most of the licensee participants recognized that the key to maximizing the benefits from the DBD programs is to make them available to their staff in a user-friendly format with managers establishing expectations and policy to ensure that they be used. Participants agreed that DBDs must be both used and useful to justify the large investment of time and money needed to produce them. Clearly written DBDs that contain an easily retrievable design basis will ensure that the licensee's staff understands the capabilities, performance parameters, and interactions of systems. This improves the modification processes, the ability to handle routine and abnormal plant conditions, the maintenance and training programs, and the regulatory oversight. The DBD effort is vital to the overall effort on the CLB.

#### 5. Managing Changes to the CLB

Almost everyone believed that, although the CLB varies among plants, each licensee must know what it is, and manage changes to it. The CLB helps assure the NRC that operating plants will not compromise the public health and safety. The industry and the NRC need regulatory processes for making changes to the CLB that ensure the CLB continues to support the safe operation of the plant.

Some of the participants stated that the means for changing the CLB are primarily distinguished by the amount of NRC involvement: none, notification after the fact, prior notification, and prior approval. Although the licensee can not always be certain which mechanism applies, it usually determines this by categorizing the information in the CLB according to the significance of the information and its final location. The information assigned to each category differs between plants. Correctly categorizing a commitment ensures that the licensee will use an appropriate means to make each change. However, various licensees did not have clear criteria for determining the category in which to place a commitment. Some licensees found it difficult to decide whether or not to add a commitment to the FSAR if that commitment would enable control as required by 10 CFR 50.59.

Some of the participants stated that the level of detail in the UFSAR and its quality appear to determine how broadly the licensee applies 10 CFR 50.59. Some licensees appear to have gone beyond NSAC-125 guidance in applying 10 CFR 50.59 to avoid any question of compliance. They are managing changes to the

many commitments not included in the FSAR, but included in docketed correspondence with the NRC. Some were concerned that this could reduce the effectiveness of the 10 CFR 50.59 process for reviewing significant safety issues. However, the licensee could not easily use 10 CFR 50.59 to determine which issues must first be approved by the NRC if the licensee does not incorporate certain types of commitments in the FSAR. For example, commitments that define the critical functions and performance parameters of new equipment and commitments stated in NRC SERs (previously agreed to by the licensee) may require previous NRC approval if the level of safety has decreased in any fashion, but these commitments may not be incorporated in the FSAR.

## 6. Managing Licensee Commitments

During the discussion, one of the industry participants submitted the following definition of a commitment as adopted by the Regulatory Commitments Tracking Group:

A documented obligation, expressed or implied, made either by the licensee or through an uncontested imposition by a regulatory agency, that either establishes requirements or promises actions to be performed.

The definition covers a range of licensee actions including continuing obligations to resolve significant safety issues, simple statements to complete minor actions by specific dates, and commitments to comply with the previously established licensing basis, as is the case for most licensee event reports (LERs) and enforcement actions, or to implement by some date a new level of licensing basis to cover a deficiency. The obligation to comply or to restore compliance is a commitment lasting until compliance is reached. Thereafter, the level of compliance is part of the licensing basis and the implementation of the commitment need no longer be tracked.

Licensees are also attempting to manage the implementation of this type of commitment by combining, deleting, adding, or using other reasonable means to limit the total outstanding commitments. The staff learned that licensees have not docketed changes to some licensing basis commitments as a result of differing interpretations and a lack of a clearly defined process for changes to commitments outside the scope of 10 CFR 50.59.

The NRC initiatives in the area of commitments include the proposed final policy to establish the Integrated Scheduling Program with the voluntary Integrated Licensing Schedules. This program gives the licensees a process to make changes to commitment schedules based on safety priorities and NRC acceptance by negative consent.

## 7. Storing and Retrieving (Compiling) The CLB

Most licensees are integrating computer information management systems into their CLB and DBD processes. These licensees recognize accurate and timely retrievability as the key to CLB management.

The licensees appeared interested in sharing more electronic information with the NRC. The licensees generally have information configuration management

systems that are the state of the art. The NRC will begin with a limited pilot program to share electronic versions of licensing correspondence with all licensees. IRM will develop a longer term incremental program for transmissions between machines. IRM and NRR will work with licensees to establish and implement standards for electronic interface.

#### 8. Observations

The staff observed the following during the workshop presentations and discussions:

- The industry should take additional measures to ensure that the underlying role of the CLB in safe operation of a plant is maintained.
- The definition of CLB should be clarified, specifically for the terms "commitment" and "design basis."
- The industry should take additional measures to ensure the docket accurately reflects the CLB.
- The NRC should clarify the FSAR update rule (10 CFR 50.71(e)) to address the design basis (Section 50.2) and its implications for the change process (Section 50.59).
- The NRC should issue guidance for controlling changes to commitments and other portion of the CLB not covered by 10 CFR 50.59.

Definition of CLB from 10 CFR 54.3

Current licensing basis (CLB) is the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to such commitments over the life of the license) that are docketed and in effect. The CLB includes the NRC regulations contained in 10 CFR parts 2, 19, 20, 21, 30, 40, 50, 51, 54, 55, 70, 72, 73, and 100 and appendices thereto; orders; license conditions; exemptions; and technical specifications. It also includes the plant-specific design basis information defined in 10 CFR 50.2 as documented in the most recent final safety analysis report (FSAR) as required by 10 CFR 50.71 and the licensee's commitments remaining in effect that were made in docketed licensing correspondence such as licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations or licensee event reports.