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Preliminary Proposed Rule Language: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors

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General Comment

The uploaded file includes a comment and background information on the language in the proposed rule that modifies the adequate protection standard to "reasonable assurance: of adequate protection.

Attachments

comment

Comments on NRC-2019-0062

Ernie Kee

November 17, 2020

Comment Addition of the qualifier “reasonable assurance” to “adequate protection” in the Proposed language in §53.20, Subpart B - Technology-Inclusive Safety Requirements, appears to imply that adequate protection may not necessarily need to be met in a plant’s licensed condition; this change may lead to loss of the public trust in the NRC ability to assert adequate protection.

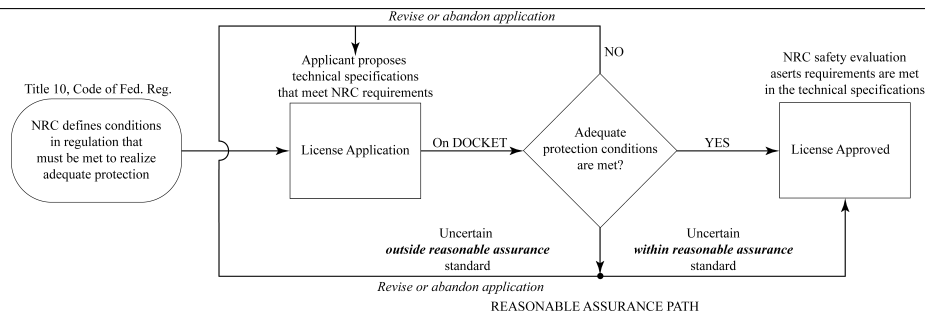


Figure showing a layman’s understanding of the flow of a license application in the “Preliminary Proposed Rule Language: Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors” showing the paths where the license either meets the adequate protection standard or alternatively, the adequate protection standard is met with uncertainty.

An understanding The proposed rule language in 10 CFR Part 53, “Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors”, includes the wording *reasonable assurance* of adequate protection:

“Each advanced nuclear plant must be designed, constructed, operated, and de-commissioned such that there is reasonable assurance of adequate protection of the public health and safety and the common defense and security.” (Proposed language in §53.20, Subpart B - Technology-Inclusive Safety Requirements)¹

¹<https://www.regulations.gov/comment?D=NRC-2019-0062-0012>, also <https://www.regulations.gov/docket?D=NRC-2019-0062>

This reviewer’s understanding is that the Atomic Energy Act indicates license applicants would provide materials to the Commission so that the Commission can make a determination that the licensee will provide adequate protection to the health and safety of the public.² But in the proposed rule, the “adequate protection” standard is qualified by “reasonable assurance”; that is, “Each advanced nuclear plant must be designed, constructed, operated, and decommissioned such that there is reasonable assurance of adequate protection of the public health and safety and the common defense and security.” This qualification, in this reviewer’s understanding and as shown in the figure above, produces a new standard and a new path for compliance with adequate protection. The new standard indicates to this reviewer that the Commission may be unsure adequate protection is met; that is, the wording allows for acceptance of the application if the Commission is only reasonably assured of adequate protection.

Adding “reasonable assurance” is either a distinction without a difference, or it means the Commission intends to meet a standard different than “adequate protection”. If it is a distinction without a difference, then it seems “reasonable assurance” could be removed without changing the intent of the rule. On the other hand, if it intends to establish a standard different than adequate protection, then the new standard should be explained; but it should retain the adequate protection standard.

The concern This reviewer’s concern is addition of the qualifier “reasonable assurance” to adequate protection leaves open the possibility that adequate protection may not necessarily be met in a plant’s licensed condition. The public trusts the Commission is able to define the conditions that must be met for adequate protection; this reviewer’s understanding is that by statute, the Commission has complete control over the conditions that must be met for adequate protection. It seems that conditions required by regulation are either met or not; if they are not met, the Commission should not grant a license or license amendment as applicable. In summary, if the Commission is either unable or unwilling to assert license conditions it requires for adequate protection are met in a plant license, the public should rightfully be skeptical about adequate protection of their health and safety.

²In Section 182.a. “adequate protection” is the stated, unqualified, requirement <https://www.govinfo.gov/content/pkg/STATUTE-68/pdf/STATUTE-68-Pg919.pdf#page=1>. We page accessed 17 Nov. 2020.