

## § 63.78

areas to which DOE has rights of access.

(b) DOE shall make available to the Commission for inspection, on reasonable notice, records kept by DOE pertaining to activities under this part.

(c)(1) DOE shall, on requests by the Director, Office of Nuclear Material Safety and Safeguards, provide rent-free office space for the exclusive use of the Commission inspection personnel. Heat, air-conditioning, light, electrical outlets, and janitorial services must be furnished by DOE. The office must be convenient to and have full access to the facility and must provide the inspector both visual and acoustic privacy.

(2) The space provided must be adequate to accommodate two full-time inspectors, and other transient NRC personnel and will be generally commensurate with other office facilities at the Yucca Mountain site geologic repository operations area. A space of 250 square feet either within the geologic repository operations area's office complex or in an office trailer or other onsite space at the geologic repository operations area is suggested as a guide. For locations at which activities are carried out under licenses issued under other parts of this chapter, additional space may be requested to accommodate additional full-time inspectors. The office space provided is subject to the approval of the Director, Office of Nuclear Material Safety and Safeguards. All furniture, supplies, and communication equipment will be furnished by the Commission.

(3) DOE shall afford any NRC resident inspector assigned to the Yucca Mountain site or other NRC inspectors identified by the Regional Administrator as likely to inspect the Yucca Mountain facility, immediate unfettered access, equivalent to access provided regular employees, after proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety.

## § 63.78 Material control and accounting records and reports.

DOE shall implement a program of material control and accounting (and accidental criticality reporting) that is

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the same as that specified in §§ 72.72, 72.74, 72.76, and 72.78 of this chapter.

## Subpart E—Technical Criteria

### § 63.101 Purpose and nature of findings.

(a)(1) Subpart B prescribes the standards for issuance of a license to receive and possess source, special nuclear, or byproduct material at a geologic repository operations area at the Yucca Mountain site. In particular, § 63.41(c) requires a finding that the issuance of a license will not constitute an unreasonable risk to the health and safety of the public. The purpose of this subpart is to set out the performance objectives for postclosure performance of the geologic repository and other criteria that, if satisfied, support a finding of no unreasonable risk. Postclosure performance objectives for the geologic repository include a requirement to limit radiological exposures to the reasonably maximally exposed individual, a requirement to limit releases of radionuclides to the accessible environment to protect ground water, and a requirement to limit radiological exposures to the reasonably maximally exposed individual in the event of human intrusion (see § 63.113(b), (c), and (d), respectively).

(2) Although the postclosure performance objectives specified at § 63.113 are generally stated in unqualified terms, it is not expected that complete assurance that the requirements will be met can be presented. A reasonable expectation, on the basis of the record before the Commission, that the postclosure performance objectives will be met, is the general standard required. Proof that the geologic repository will conform with the objectives for postclosure performance is not to be had in the ordinary sense of the word because of the uncertainties inherent in the understanding of the evolution of the geologic setting, biosphere, and engineered barrier system. For such long-term performance, what is required is reasonable expectation, making allowance for the time period, hazards, and uncertainties involved, that the outcome will conform with the objectives for postclosure performance

for the geologic repository. Demonstrating compliance will involve the use of complex predictive models that are supported by limited data from field and laboratory tests, site-specific monitoring, and natural analog studies that may be supplemented with prevalent expert judgment. Compliance demonstrations should not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence. The performance assessments and analyses should focus upon the full range of defensible and reasonable parameter distributions rather than only upon extreme physical situations and parameter values. Further, in reaching a determination of reasonable expectation, the Commission may supplement numerical analyses with qualitative judgments including, for example, consideration of the degree of diversity among the multiple barriers as a measure of the resiliency of the geologic repository.

(b) Subpart B lists findings that must be made in support of an authorization to construct a geologic repository operations area at the Yucca Mountain site. Prior to closure, § 63.31(a)(1) requires a finding that there is reasonable assurance that the types and amounts of radioactive materials described in the application can be received, possessed, and stored in a geologic repository operations area of the design proposed without unreasonable risk to the health and safety of the public. After permanent closure, § 63.31(a)(2) requires the Commission to consider whether there is a reasonable expectation the site and design comply with the postclosure performance objectives. Once again, although the criteria may be written in unqualified terms, the demonstration of compliance must take uncertainties and gaps in knowledge into account so that the Commission can make the specified finding with respect to paragraph (a)(2) of § 63.31.

#### § 63.102 Concepts.

This section provides a functional overview of this Subpart E. In the event of any inconsistency, the definitions in § 63.2 prevail.

(a) *The HLW facility at the Yucca Mountain site.* NRC exercises licensing and related regulatory authority over those facilities described in section 202 (3) and (4) of the Energy Reorganization Act of 1974, including the site at Yucca Mountain, as designated by the Energy Policy Act of 1992.

(b) *The geologic repository operations area.* (1) These regulations deal with the exercise of authority with respect to a particular class of HLW facility—namely, a geologic repository operations area at Yucca Mountain.

(2) *A geologic repository operations area* consists of those surface and subsurface areas of the site that are part of a geologic repository where radioactive waste handling activities are conducted. The underground structure, backfill materials, if any, and openings that penetrate the underground structure (e.g., ramps, shafts and boreholes, including their seals), are designated the *underground facility*.

(3) The exercise of Commission authority requires that the geologic repository operations area be used for storage (which includes disposal) of *high-level radioactive wastes (HLW)*.

(4) HLW includes irradiated reactor fuel as well as reprocessing wastes. However, if DOE proposes to use the geologic repository operations area for storage of radioactive waste other than HLW, the storage of this radioactive waste is subject to the requirements of this part.

(c) *Stages in the licensing process.* There are several stages in the licensing process. The *site characterization* stage, when the performance confirmation program is started, begins before submission of a license application, and may result in consequences requiring evaluation in the license review. The construction stage would follow after the issuance of a construction authorization. A period of operations follows the Commission's issuance of a license. The period of operations includes the time during which *emplacement* of wastes occurs; any subsequent period before permanent closure during which the emplaced wastes are *retrievable*; and *permanent closure*, which includes sealing openings to the repository. Permanent closure represents the end of the performance confirmation