

NUCLEAR REGULATORY COMMISSION

[NRC-2014-0255]

Security Exemptions/License Amendment Requests for Decommissioning Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim staff guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Interim Staff Guidance (ISG) NSIR/DSP-ISG-03, "Review of Security Exemptions/License Amendment Requests for Decommissioning Nuclear Power Plants," dated September 28, 2015. This document provides guidance for NRC staff to ensure clear and consistent reviews of a licensee's request for licensing actions and amendments, the use of alternative measures, and requests for exemption from security regulations for nuclear power reactors after permanent cessation of plant operations.

DATES: DATES: This ISG is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER

ADDRESSES: Please refer to Docket ID NRC-2014-0255 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0255**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The draft NSIR/DSP-ISG-03, the final NSIR/DSP-ISG-03, the public comments, and the NRC staff's responses to public comments are available in ADAMS under Accession Nos. ML14294A170, ML15106A737, ML15042A208, and ML15054A200.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Douglas Garner, telephone: 301-287-0229; e-mail: Douglas.Garner@nrc.gov, of the Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Discussion.

Currently, the power reactor physical security requirements in part 73 of Title 10 of the *Code of Federal Regulations* (10 CFR) and the NRC security orders that apply to licensees of nuclear power reactors under 10 CFR part 50 apply equally to operating and decommissioning power reactor licensees; the 10 CFR part 50 license is retained after permanent cessation of operations and removal of fuel from the reactor vessel. The NRC recognizes that licensees that have permanently ceased operations and have no fuel in the reactor vessel present a significantly reduced risk to public health and safety compared with operating reactors. Because of the lower comparative risk from a decommissioning power reactor, licensees typically request exemptions from regulatory requirements on the basis that the application of a specific regulation in the particular circumstance of decommissioning plants is not necessary to achieve the underlying purpose of the regulations and orders.

Licensees have historically used the NRC's existing license amendment and exemption processes to propose tailored security requirements for site-specific conditions at a decommissioning facility. Licensees must follow the process outlined in 10 CFR 73.5 when applying for exemptions from security regulations.

This ISG provides guidance to NRC staff in processing requests for license amendments and exemptions from the security requirements for nuclear power reactors that are undergoing decommissioning. Use of this ISG would result in consistent and timely reviews of requests for exemption from certain security regulations.

II. Public Comments

A draft ISG was published for public comment in the *Federal Register* on December 2, 2014 (79 FR 71458). The public comment period closed on January 8, 2015. The NRC received 37 separate comments on the draft ISG in three submissions from members of the nuclear industry. None of the comments received resulted in substantive changes being made to the ISG. One submission from the nuclear industry provided editorial comments and comments for clarification.

III. Changes to the ISG.

This ISG was revised from the draft that appeared in the *Federal Register* on December 2, 2014. Editorial changes based on public comments are described in the NRC staff's responses to public comments. The ISG was also revised to provide clarification to staff regarding internal NRC processing.

IV. Congressional Review Act.

NSIR/DSP-ISG-03 is a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

V. Backfitting and Issue Finality.

The NRC is issuing interim guidance for the NRC staff regarding its review of requests from licensees of decommissioning nuclear power plants for license amendments, alternative measures, and exemptions from specific security requirements in 10 CFR part 73. Issuance of the ISG does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. The ISG positions do not constitute backfitting, inasmuch as the ISG is internal guidance to NRC staff.

The ISG provides interim guidance to the staff on how to review certain requests for exemption, alternative measures, or license amendments. Changes in internal staff guidance are not matters for which applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in 10 CFR part 52.

2. The staff has no intention to impose the ISG on existing nuclear power plant licenses or holders of regulatory approvals either now or in the future (absent a voluntary request for change from the licensee or holder of a regulatory approval).

The staff does not intend to impose or apply the positions described in the ISG to existing (already issued) licenses (e.g., operating licenses and combined licenses) and regulatory approvals. Hence, the ISG – even if considered guidance that is within the purview of the issue finality provisions in 10 CFR part 52 – need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose

a position in the ISG on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described in the applicable issue finality provision, as applicable.

3. Backfitting and issue finality do not – with limited exceptions not applicable here – protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52 – with certain exclusions discussed below – were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in the ISG in a manner that is inconsistent with any issue finality provisions.

If, in the future, the staff seeks to impose a position in the ISG in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 30th day of September, 2015.

For the Nuclear Regulatory Commission.

/RA/

Christiana Lui, Director,
Division of Security Policy,
Office of Nuclear Security and Incident Response

Dated at Rockville, Maryland, this 30th day of September, 2015.

For the Nuclear Regulatory Commission.

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DISTRIBUTION:

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