

From: [Mike Callahan](#)
To: [RulemakingComments_Resource](#)
Subject: [External_Sender] Comment of the Decommissioning Plants Coalition re Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning; Docket Number 2022-03131
Date: Tuesday, August 30, 2022 12:06:13 PM
Attachments: [DPCRruleCommentLetter 8-30-22.pdf](#)
[Enclosure_re Provisions Efficiency.docx](#)
[EnclosureDPCreIFMP.docx](#)
[EnclosureAnswerstoSpecificQuestions.docx](#)
[EnclosureDPCreTextandGuidance.docx](#)

Attached find the comments of the Decommissioning Plant Coalition re subject Proposed Rule that includes 4 enclosures.

Thank you,

Michael S. Callahan
Governmental Strategies Inc (on behalf of the Decommissioning Plant Coalition)
301-526-7606



August 30, 2022

Secretary,
U.S. Nuclear Regulatory Commission,
Washington, DC 20555-0001,
ATTN: Rulemakings and Adjudications Staff.

Re: Docket Number 2022-03131

The Decommissioning Plant Coalition (DPC)* is providing comments on the Nuclear Regulatory Commission's (NRC), "Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning[†]." Accompanying this letter are enclosures that: indicate those portions of the proposed final rule that promote efficiency; provide our views on the Irradiated Fuel Management Plan (IFMP) provisions; answer the questions posed in the Federal Register Notice; and offer comments and changes to the rule and the guidance documents. We generally endorse the changes suggested by the Nuclear Energy Institute and the American Nuclear Society. We applaud the improved product that the Commission and the staff have produced in issuing the FRN. Our comments are directed to improve the rule and its associated guidance.

A significant concern is the decision to include NRC preliminary review and approval of Irradiated Fuel Management Plans (IFMP) and subsequent amendments as license amendments. The NRC's robust and successful regulatory and inspection programs already address the programs which Licensees will use to manage the spent fuel and Greater -Than-Class-C Low Level Radioactive Wastes that will be stored in Interim Spent Fuel Storage Installations. The IFMP is no longer necessary.

* The DPC was established in 2001 out of the recognition that the overwhelming attention of the regulator, the industry, and policy makers would be focused on the operating fleet and provides a forum for the identification of federal policy and regulatory issues of unique or special concern to decommissioning civilian nuclear facilities. Since its inception, plants that have been represented in the work of the DPC include charter members Dairyland (WI), Connecticut Yankee (CT), Rancho Seco (CA), Maine Yankee (ME), Yankee Rowe (MA), Humboldt Bay (CA), and joined by Big Rock (MI), Crystal River (FL), San Onofre (CA), Vermont Yankee (VT), Zion (IL), Kewaunee (WI), and Ft. Calhoun (NE). Other Entergy, Exelon, and PG&E plants have participated via their specific sites' memberships. Our primary goal remains to hasten the day when the spent fuel stored on-site will be successfully removed and no longer our companies' liability. The importance of that goal cannot be overstated. Several of our companies are simply awaiting the fulfillment of that goal to go out of business. Others find that spent fuel and GTCC storage consume up to 20% of corporate attention and resources, a disparate amount considering that these facilities no longer produce revenue. While the fuel remains on-site, we are also committed to engaging in activities that directly affect these sites.

[†] 87 FR 12254

Further, this provision to treat the IFMP as a license amendment adds no measurable improvement to the adequate protection regarding site safety or security. It produces additional inefficiencies and expenses in the decommissioning and spent fuel management process and should need no NRC approval. It should be eliminated once the fuel is safely, securely, and passively stored in an ISFSI. Should the Commission decide to continue to insist that NRC approval of the IFMP (including amendments) should be included in the decommissioning planning process, such amendments should not be treated as license amendments.

We have further comments and concerns on this subject that are laid out in an attachment, in the attached answers to the specific questions posed in the FRN and in our comments on the draft guidance documents. Additionally, we do have an additional general concern to highlight.

The proposed Level 3 combines sites where the decommissioning of the reactor is ongoing or will be ongoing with those that have completed decommissioning of the Nuclear Plant (our suggested DPC Level 4). For example, at a proposed Rule Level 3 site all the fuel may have been loaded from the spent fuel pool into dry cask storage but there remains reactor site decommissioning work to be done. Therefore, NRC's proposed Rule Level 3 would include sites that may contain an inventory of liquid radioactive wastes and contaminated Systems, Structures and Components. In this basic regard alone, there is a difference of some radiological and physical significance between what the FRN describes in the Rule's Level 3 as, "ISFSI-only," and, the DPC Level 4 "Stand-Alone ISFSI/Decommissioned Reactor." It mixes, de-facto, two-categories into one.

We believe some concerns may have been more easily addressed if the NRC had adopted our earlier and repeated suggestion - that the Graded Approach that underpins this rule include an additional level. We remain concerned that the proposed rule if implemented as published in the Federal Register will lead to outcomes whereby the NRC will in some regards treat essentially identical ISFSI sites differently both in licensing and inspection bases.

Implementing our proposed insertion of a DPC Level 4 for "Stand-Alone ISFSI/Decommissioned Reactor" would help avoid what we see as inevitable circumstances in which some licensees will request exemptions from requirements that apply to them but not to others, while some stakeholders will request the application of requirements in the opposite direction. The establishment of a DPC Level 4 as we suggest would aid in clarifying unclear backfit applicability. The backfit provisions in the rule as described seem overly simplistic; adding this Level can be a trigger to rectify some of the confusing elements of the proposal that are highlighted in our comments as well as those in NEI's well-stated comments, in the answers to the specific question posed in the FRN.

We believe that for the rule to be successful, the four levels set forth in the proposed rule must clearly address the distinct status of, “Stand-Alone ISFSI/Decommissioned Reactor,” via the following:

- The Commission by a separate administrative rule convert all Part 50 general ISFSI licensees into Part 72 licensees once all that remains is the stand-alone ISFSI as well as administratively convert any necessary license changes to accommodate that conversion.
- The rule includes the change advocated by the Nuclear Energy Institute to recognize that a Certified Fuel Handler is no longer on site while sites are in a Level 3 (or the DPC proposed Level 4) configuration.
- There be no requirement for NRC Part 26 drug testing or fatigue applicability once sites reach, “Stand-Alone ISFSI/Decommissioned Reactor, status.”
- The Commission develop specific guidance document(s), especially for Emergency Planning, that can clarify what lingering decommissioning provisions apply to “Stand-Alone ISFSI/Decommissioned Reactor” sites and those that do not.

Our primary goal is that the final Rule when implemented not lead to outcomes whereby the NRC will in some regards treat essentially identical ISFSI sites differently both in licensing and inspection bases.

We trust that our comments will carry the weight that those of our organization/coalition, comprised solely of members of the decommissioning community, should merit in this effort.

We look forward to constructive engagement with the NRC in progressing with this important task. Please contact me or Mr. Michael Callahan to arrange these engagements.

Sincerely,



Wayne Norton,
Executive Spokesperson, Decommissioning Plant Coalition
President, Connecticut Yankee and Yankee Rowe, Maine Yankee

Enclosures: As Stated

Enclosure

Portions of the Proposed Rule that Promote Efficiency

The DPC believes that there are provisions of the proposed final rule that fulfill the goals of the rulemaking. As we will point out elsewhere, some of these areas can be improved but the concepts are sound.

A graded approach

We endorse a graded approach that is commensurate with the reduction of risk at the various stages of decommissioning.

Emergency Preparedness

The DPC endorses reducing the scope of emergency planning as the risks of an emergency sharply recede.

Physical Security

The DPC agrees with the proposed change that would allow an ISFSI general licensee to provide for physical protection of the spent fuel under the same regulations that apply to ISFSI specific licensees. Note that the DPC believes that general licensees should be able to request for administrative approval to convert to a specific license once they are in a status of Stand-Alone ISFSI/Decommissioned Reactor.

Cyber Security

The DPC endorses the changes associated with ending cybersecurity requirements once the fuel is sufficiently cooled.

Decommissioning Funding

The DPC supports the change in the decommissioning funding reporting frequency that will be in step with the ISFSI reporting requirements in 10 CFR 72.30.

The DPC supports the change that additional funding assurance in a report be remedied by the time of the next report which will assure consistency with the Regulatory Guide 1.159.

Offsite and onsite financial protection requirements and indemnity agreements

The DPC agrees that reductions in insurance amounts can be done without an NRC exemption.

Record Retention Requirements

The DPC welcomes the change that would remove record retention requirements for no longer utilized equipment and would end the retention of some multiple copies of certain records.

Low-level waste transportation

The DPC supports extending the window for notification of receipt of shipments of low-level radioactive wastes.

Foreign ownership, control, or domination

The DPC agrees with this change that recognizes that there is no longer a production or utilization facility on-site after it permanently ceases operation.

Removal of license conditions and withdrawal of orders made redundant by regulation

The DPC agrees with these changes.

Enclosure

DPC Views on the Irradiated Fuel Management Plan (IFMP)

The Proposed Rule includes a requirement that IFMP submittals to the NRC be license amendments and changes to the IFMP be an application for an amendment to the license.¹

The DPC strongly recommends deleting a requirement to submit an IFMP.

We only see in the FRN an analysis that one part of the regulations requires such a report, and that another does not. The proposed rule is simply a compliance measure. It does not enhance safety or security of ISFSI planning or storage. Logic fails to justify the continued need for such a plan at this point in the dry cask storage era at all.

The NRC states that licensees must include a plan for removing spent fuel (SNF) stored on-site and draws differences between specific licensees and general licensees. The NRC states these differences create regulatory uncertainty and proposes to clarify and align the regulations to provide clarity and transparency and openness in decommissioning and spent fuel management planning.

The FRN has no examination of whether the Report itself is actually needed.

When the NRC first made the regulatory marriage of decommissioning and spent fuel management in 1984, licensees and the NRC existed in a different spent fuel era than is the case today. Site characterizations were still underway at multiple sites for a repository under the Nuclear Waste Policy Act (NWPA) of 1982 with no site selection in the near term expected. There was uncertainty as to how licensees would choose to store their fuel should they cease operations at that time. The 1987 NWPA Amendments Act led to an expectation that a repository program would be complete in time for the fuel to be moved from either pools or dry casks that were being newly employed. By 1996, there were expectations that the repository and its licensing called for in the NWPA Amendments Act of 1987 would be realized; there were still enough matters to be addressed by DOE (i.e. the SNF queue, transportation casks and railcars, etc.) that may have justified an IFMP. Leaving SNF in the pool until DOE soon arrived to remove it was a reasonable option at that time.

In the current dry cask storage era, there is no uncertainty: on-site dry cask storage is the sole national option available to licensees whose sites no longer have operating reactors and are planning to decommission. There already exist ample long-standing regulatory and inspection programs to determine that licensees have sufficient funding to sustain the storage mission once decommissioning is otherwise complete; that the fuel will be safely and securely transferred to dry cask storage; that it will be subject to aging management requirements and

¹ FR Vol 87, No 42, page 12296

inspections; that the ultimate transportation of the fuel away from the sites is provided for in regulations of two agencies; and that if it remains on site for one hundred years or so the NRC determined (in NRC's continued storage rule proceeding) that the storage facilities can be rebuilt.

The uncertainties that exist today may be several, but they are not the licensees' uncertainties. There exist uncertainties on the Department of Energy's plans to fulfill its contractual responsibilities to remove the fuel from our sites. This removal was to commence beginning in January 1998. Licensees are not legally responsible for planning or addressing this element over which they have no control.

That leads to a conclusion that the proposal to require an IFMP is purely a compliance matter to make current regulatory language passages compatible with one another. There is nowhere evident that there is any thought being given to whether the requirement in Section 72.218(b) or Section 50.54(bb) pursuant to an application of termination of a Part 50 license for an IFMP is relevant or needed for the safe decommissioning of permanently shut down facilities or storage of the canisters in dry cask storage. There is only one path that a license can now take (on-site dry storage systems), and that path is already well-regulated and inspected by the NRC. There is certainly no health, safety, or security goal being addressed by this change.

Two matters merit further discussion. The first is the assertion that these IFMP requirements would not apply to ISFSI-only licensees. While the DPC interprets this that any ISFSI-only licensees would not have submit changes to their current IFMP as a license amendment, we would seek NRC agreement by documenting that position in the rule text. Even if the staff agrees with the DPC interpretation, it must surely recognize that very soon down the regulatory road, interested stakeholders will want to know why some must submit changes as a license amendment and others do not, and the NRC and licensees will be under pressure to accede to demands that one be made as a license amendment, a backfit to be sure. The second is that the nature of amendments from ISFSI-only facilities are minor, changing perhaps the estimated date that the Department will occasionally issue for the commencement of its removal of fuel from sites and perhaps an adjustment in the dollars and cents, but not the scope of the costs of storage. These matters surely are not those that warrant the expenditure of effort of the agency or its licensees and are not needed at all.

Enclosure
Answers to Specific Requests for Comment

As part of this rulemaking, should the NRC require approval of the PSDAR, a site-specific environmental review, and hearing opportunity before undertaking any decommissioning activity? Other than NRC review and approval of the PSDAR, are there other activities that could help to increase transparency and public trust in the NRC regulatory framework for decommissioning? Should the rule provide a role for the states or local governments in the process? What should that role be? What are the advantages or disadvantages of various roles? Please provide an explanation for your response.

DPC Comments

The Decommissioning Plant Coalition (DPC) strongly urges the Commission not to require approval of the PSDAR, a site-specific environmental review, and a hearing opportunity before undertaking any decommissioning activity.

The DPC believes there are currently adequate and numerous activities that promote transparency and public trust in the regulatory framework.

The DPC believes a role(s) for states and local governments in the decommissioning has already been successfully demonstrated.

Our expanded responses are below.

Re the PSDAR:

There is a long history of safe and secure decommissioning of permanently closed nuclear power production facilities without such approval. The lessons-learned from some of these successes have been captured in NRC documents and in EPRI studies. For one example, the Maine Yankee Community Advisory Panel produced a report of the safe and secure decommissioning of that site. In no case was any deficiency in reaching that successful state attributed to the lack of NRC approval of the PSDAR.

Further, the NRC's safety and security regulations, provide the framework necessary to assure the public and worker health and safety and security of the spent fuel that remains on-site. The PSDAR is not an addition to that thorough regulatory framework; it simply is very useful information provided to the NRC, state and local governments, and the public on how a licensee plans to execute the decommissioning within the NRC's regulatory framework.

The NRC already approves licensee License Termination Plans and adds that as an existing layer of oversight ensuring safe and effective decommissioning.

Should a licensee propose to perform activities that fall outside the existing framework, the NRC has ample authority to inform a licensee that its plans should be revised lest it enter space that would violate a regulation or an approved exemption.

NRC approval of the PSDAR, then, would not add to the safety and security of the regulatory framework that encompasses decommissioning efforts to date or in the future. It would be an additional and unnecessary step since it would not address any deficiency in the adequate protection of the public health and safety in the decommissioning process.

Re a site-specific environmental review:

There should be no requirement for a site-specific environmental review. Decommissioning a nuclear power plant does not constitute a new major federal licensing action.

Each reactor that is licensed by the NRC will eventually cease power generating operations and be decommissioned. The licensing framework assumes this, and the regulations, especially if changes to the rule recognize the traditionally granted exemptions, will be in place throughout the licensed life of the plant. In addition, the current process using the existing Generic Environmental Impact Statement and other site environmental reviews have proven effective.

“Decommissioning,” as defined in 10 CFR Part 50. Part 50.33(k) and 50.75 recognize planning and financial assurance considerations for licensed plants. Part 50.82 already proscribes the steps to be taken in decommissioning.

Decommissioning is not a new action, or regulatorily separate activity at a licensed facility, and a site-specific ER is unnecessary and duplicative.

Re a hearing opportunity:

The PSDAR processes as detailed in Reg. Guide 1.185 and 50.82 (a)(4)(ii) and in Draft Regulatory Guide DG-1347 have provisions for a comment period and a public meeting. It also addresses the fact that NRC will review the PSDAR for compliance with the regulations. A hearing would bring no additional safety or security benefits to the process that are not already addressed.

There is no significant new federal action that should trigger an opportunity for a hearing. Decommissioning is a process inherently built into the issuance of a facility license and there is no benefit to safety, security, and financial adequacy by requiring one.

Re activities that could help to increase transparency and public trust in the NRC regulatory framework for decommissioning?

The DPC commends the NRC staff for its efforts to make itself available to federal, state, and local officials and the public to discuss thoroughly its decommissioning regulatory framework and spent fuel management requirements. Staff does so even though in most cases it knows

that many questions and criticisms have been previously addressed are likely to be raised repeatedly, often by some who have raised them in other locales. In some cases, NRC must realize that some issues are raised in pursuit of ideology rather than for purposes of inquiry.

Transparency is a strong element of NRC's current decommissioning programs. Public trust improves with strong interaction with leaders in facility communities and by ever-sharpening the communication skills of the staff.

Re a rule requiring state and local governments role in the process:

State and local governments have been involved in the process to varying extents in facility decommissioning. At one end of the spectrum are the requirements of various states in permitting and non-radiological cleanup standards. Some locations have state-mandated community engagement processes with state and local representation required. Voluntary Community Engagement Panels have also had such representation. Others have state inspectors shadowing licensee activities. The level and extent of state and local involvement has depended upon local conditions and attitudes. Requiring the role by rule is not necessary from a safety and security viewpoint and would usurp state and local prerogatives to establish a role that fits the location.

What are the advantages and disadvantages of requiring prompt decontamination rather than allowing up to 60 years to decommission a site? As part of its review of a PSDAR, what are the advantages and disadvantages of NRC evaluating and making a decision about the timeframe for decommissioning on a site-specific basis?

Re: What are the advantages and disadvantages of requiring prompt decontamination rather than allowing up to 60 years to decommission a site?

“Prompt” decontamination has not come about due to any movement to require it. It has become prevalent due to the availability of Low-Level Radioactive Waste (LLRW) disposal capacity, technological improvements and efficiencies that yield dramatic reductions in exposure to workers and time to complete tasks, and new business models featuring entities that implement these improvements well within the budgeted amounts for decommissioning. In this environment, such a requirement is not necessary.

Do not lose sight of the chief advantage of allowing 60 years when first established – the reduction in radiation levels and associated risks in decommissioning and disposing of the material. At that time, the availability of LLRW disposal capacity was decidedly not assured. Making a change to require, “prompt,” decommissioning requires an assumption that current conditions will prevail undisturbed by future events. This strikes the DPC as an unnecessary change.

Re: NRC evaluating and making a decision about the timeframe for decommissioning on a site-specific basis?

The NRC should not be a decisionmaker in the timeframe for decommissioning on a site-specific basis.

Debates on how quickly a specific site undergoes and completes decommissioning allow local communities’ and stakeholders’ to express views and, at times, strong preferences on the timeframe under consideration.

If there arises a public health and safety or national security matter requiring a faster or slower pace, the NRC has plenty of authority to issue an Order requiring same. All decommissioning projects to date have been carried out safely and securely.

Additionally, the Commission is seeing emerging situations in which it needs to address the “60 year” timeframe. If not part of this rulemaking, decisions on potential exemption requests for such cases need to follow a framework that the staff should soon develop.

What are the advantages and disadvantages of requiring dedicated radiological emergency planning, including a 10-mile EPZ, until all spent nuclear fuel at a site is removed from the spent fuel pool and placed in dry cask storage? Is there additional information the NRC should consider in evaluating whether all-hazards planning would be as effective as dedicated radiological emergency planning?

Re the advantages and disadvantages of requiring dedicated radiological emergency planning...

The NRC proposed rule provides data and risk informed analysis of the hazard presented by the spent fuel under storage conditions and revises planning assumptions that should be included in the final rule.

The advantage to requiring a 10 mile EPZ might be that it would seemingly and easily address the unease of some stakeholders on ending dedicated emergency planning and associated licensee funding once the fuel has cooled sufficiently in the pool. There is no easy way to address the unease; it requires understanding and acknowledgement of the rigorous analysis and in-depth study that the NRC, its licensees, and other stakeholders (i.e., EPRI) have brought to this matter that provides the basis for eliminating an EPZ.

The disadvantage is that the NRC would require continuation of the 10 mile EPZ beyond a time and without a reason that can be tied to its statutory mission, given the findings of the rigorous analysis and in-depth study of the risks posed by the fuel once cooled. Requiring the continued expenditure of licensee funds for activities that are contrary to safety considerations is not only a chilling precedent for the NRC's entire regulatory framework, but will unnecessarily draw resources from the decommissioning funds.

Re additional information the NRC should consider...

The DPC believes the NRC/FEMA all-hazards planning and approach is effective and the efforts to regularly evaluate and improve that process should continue.

The NRC staff has determined that 10 hours would be a sufficient amount of time for an emergency response to a spent fuel pool accident based on an all-hazards plan. Is there additional information the NRC should consider in evaluating this issue?

The DPC believes the 10 hour determination provides for the protection of the public health and safety. The NRC's determination is based on the rigorous analysis and in-depth study that the NRC, its licensees, and other stakeholders(i.e. EPRI) have brought to this matter that provides the basis for it.

Re: additional information the NRC should consider...

The NRC staff, its licensees, and industry stakeholders have done thorough analysis that provide confidence that the public health and safety will be protected.

The DPC expects that the NRC and its licensees would evaluate any new and credible information responsibly brought forth by rigorous study and analysis.

What are the advantages and disadvantages of requiring nuclear power plant licensees to maintain those aspects of ERDS until all spent fuel is removed from the pool?

The DPC believes the proposed rule addresses this issue consistent with the risk once the fuel is cooled.

Just as with the discussion on the 10 mile EPZ, the advantage might be that a requirement would seemingly and easily address the unease of some stakeholders on ending transmission of ERDS data.

The decidedly disadvantageous nature of such a requirement is that it would require continuation of ERDS beyond a time and without a reason that can be tied to NRC's statutory mission.

What are the advantages and disadvantages of extending cyber security requirements to shutdown nuclear power plants until all spent fuel is transferred to dry cask storage?

The DPC believes the proposed rule addresses this issue consistent with the risk once the fuel is cooled.

The advantage is that the requirements would seemingly and easily address the unease of some stakeholders on ending cybersecurity requirements.

The disadvantage is that the NRC would require continuation of cyber security requirements beyond a time and without a reason that can be tied to its statutory mission, given the findings of the rigorous analysis and in-depth study of the risks posed by the fuel once cooled. The continued expenditure of licensee funds for activities that are contrary to safety considerations is not only a chilling precedent for the NRC's entire regulatory framework, but will unnecessarily draw resources from the decommissioning funds.

What are the advantages and disadvantages of requiring the existing level of insurance to be maintained until all spent fuel is in dry cask storage (Level 3)?

The DPC believes the proposed rule properly sets an adequate level of insurance.

The DPC also believes that once the fuel is all in dry cask storage, plant decommissioning work is otherwise completed, and all that remains is the stored spent fuel and associated security and administrative structures, that further reductions are warranted. The template of levels we advocated in our letters to the EDO would call this Level 4.

This is but one of the matters that led us to propose a new Level 4 under a 5 Level framework. The NRC Draft Regulatory Basis of November 2017 contained additional options. We continue to believe that this rulemaking should incorporate Option 3 of Section 4.3 in Appendix G of that November 2017 document¹.

¹ Regulatory Improvements for Power Reactors Transitioning to Decommissioning
RIN Number: 3150-AJ59
NRC Docket ID: NRC-2015-0070
Regulatory Basis Document
November 20, 2017

(Re Financial Assurance) What are the advantages and disadvantages of updating the formula to reflect recent data and to cover all estimated radiological decommissioning costs rather than the bulk of the costs?

The DPC believes that efforts to refine a more precise estimate at any time, especially during power production operations, will not account for changes in decommissioning practices, technologies, disposal of materials, and business models.

One does not know with precision what estimated costs are going to be until decommissioning becomes a specific reality. Efforts to estimate other than the bulk of the cost ignore the plain fact that all decommissioning projects have been successfully funded and completed..

What are the advantages and disadvantages of requiring a full site investigation and characterization at the time of shutdown? What are the advantages and disadvantages of eliminating the formula and requiring a site-specific cost estimate during operations?

Re: advantages and disadvantages of requiring a full site investigation and characterization at the time of shutdown?

The advantage is that there would be a radiological estimate, however imprecise, of the site for NRC and public consumption.

The disadvantage is that a more complete characterization can be made based on findings during decommissioning and as those activities are ending. Any changes to the characterization made upon shutdown is likely to be seen as a deficiency, especially by some stakeholders, on the part of the licensee and the NRC, when in fact they are simply better informed characterizations.

Re: advantages and disadvantages of eliminating the formula and requiring a site-specific cost estimate during operations?

The DPC believes that efforts to refine a more precise estimate at any time, especially during power production operations, will not account for changes in future decommissioning practices, technologies, disposal of materials, and business models.

There are no advantages to establishing such a requirement.

Should the rule allow decommissioning trust fund assets to be used for spent fuel management if (1) there is a projected surplus in the fund based on a comparison to the expected costs identified in a site-specific cost estimate and (2) the assets are returned to the fund within an established period of time? What are the advantages and disadvantages of allowing decommissioning trust fund assets to be used for those purposes? What are the advantages and disadvantages of allowing decommissioning trust fund assets to be used for non-radiological site restoration prior to the completion of radiological decommissioning?

Re: Should the rule allow decommissioning trust fund assets to be used for spent fuel management...?

Yes.

Decommissioning the spent fuel storage facility at each site is an activity that remains after the reactor site is otherwise decommissioned years before. We come to this state not due to any licensee desire to keep the spent fuel on the unreleased portion of the site.

To date, licensees have been able to allow trust fund expenditures after demonstrating an adequate surplus is available to absorb the costs.

The exemptions issued by NRC to allow such expenditures are well-known, have been effective, have not impinged upon the adequacy of the DTFs to accomplish decommissioning missions.

Re: the advantages and disadvantages of allowing decommissioning trust fund assets to be used for those purposes?

The advantages are obvious. Sites that no longer have a revenue stream from power production are able to budget for the passive storage activities that are not of their making.

There are no demonstrated disadvantages since the licensees must demonstrate that funding is sufficient to be allowed to do this.

Re: the advantages and disadvantages of allowing decommissioning trust fund assets to be used for non-radiological site restoration...

Should there be projected surpluses in the fund after estimates and use of the fund for spent fuel management, there are no disadvantages to allowing assets to be used for non-radiological site restoration to comply with and in accordance with federal, state, and local requirements.

(DTF Assurance Reporting) What are the advantages and disadvantages to extending the reporting frequency from two years to three years? Does this change affect the risk of insufficient decommissioning funding? Please provide an explanation for your response.

Re: advantages and disadvantages to extending the reporting frequency from two years to three years?

The advantage of extending the reporting frequency is to take advantage of the excellent record of licensees in assuring funds are adequate to meet decommissioning. There are no obvious disadvantages.

Re: change affect the risk of insufficient decommissioning funding?

The NRC need not depend solely on the reporting to spot emerging deficiencies in licensee activities or conditions that might affect adequate funding. The NRC has plenty of regulatory authority to have any licensee answer questions or have additional funds available in response to emerging conditions.

What are the advantages and disadvantages of applying the Backfit Rule to decommissioning nuclear power plants?

There should be no doubt that the Backfit Rule should apply to plants that reach what we would call, "Level 4," status. We agree that it should also apply to all facilities that have permanently ceased operations.

There are no disadvantages to applying the backfit rule.

The advantage is that the licensees and the Commission can take actions that end requirements that are no longer needed for licensing and compliance as the level of risk drops according to the status of the spent fuel without unduly requiring continued or imposing new measures that are not needed to assure the adequate protection of the public health and safety.

There are a number of what we will term, "back door backfits," should the rule and its associated guidance be enacted as presented in the FRN. For example, in requiring that revisions to IFMPs be treated as license amendments, the Commission is in fact imposing a new requirement. As we explain elsewhere, revising an IFMP is an activity that is not necessary and in any event rightly should be terminated once the fuel is in dry cask storage. And by modifying 10 CFR 50.54(bb) to state that the IFMP must be submitted as a license amendment, it is not a clarification of an existing requirement, it is a new requirement.

We believe another example of a, "Backdoor Backfit", should be addressed; the proposed revision to 10 CFR 73.55(p) reads as if a Certified Fuel Handler is needed at all decommissioned or decommissioning sites to suspend security measures in the event of an emergency or severe weather. We do not believe that the Commission intends this change to occur at what we would term, "Level 4," sites.

Once the fuel has been loaded into dry cask, an appropriately trained Security Shift Supervisor can be the senior on-shift licensee representative empowered to supervise the safe operations of the ISFSI during normal and accident conditions. We note that the Nuclear Energy Institute has identified this matter in its detailed comments on the draft rule, along with suggested language, and we endorse its suggested change. We also note that DG-1347 would need revision to incorporate this change.

Finally, we remain concerned that confusion will remain over the matter of fitness-for-duty requirements at our Level 4 sites. We do not believe that the Commission intend to impose NRC Fitness for Duty Requirements at these sites. Here is another element of this rulemaking where the clarity of the rule language and associated guidance can be aided by the addition of our Level 4. (See DPC letter to EDO dated July 23, 2018.)

What are the advantages and disadvantages of the current 10 CFR Part 50.12 approach to decommissioning- related exemptions? What standard should the NRC apply in determining whether to grant exemptions from the new regulation? What are the advantages and disadvantages of providing an opportunity for the public to weigh in on such exemption requests? Are there other process changes the NRC should consider in determining whether to grant exemptions from the new regulation?

Re: advantages and disadvantages of the current 10 CFR Part 50.12 approach to decommissioning- related exemptions?

The DPC is concerned that should the rule proceed as proposed in the FRN that there is the prospect that, at the end of the process, exemptions may be requested by those who are in varying Levels of spent fuel transfer when reaching actual ISFSI-only status. For that reason, we have consistently stressed the need for an additional Level of spent fuel status to be defined in the rule for ISFSI only sites.

With that in mind, the NRC should continue to allow exemption requests under 10 CFR 50.12. The process to date has proven to provide adequate protection of the public health and safety. The rule as proposed will narrow the field of exemptions, should any be needed, to items entirely consistent with 10 CFR 50.12 as they will be concerned with items of increasing small risk and import.

Re: standard should the NRC apply...

The DPC believes that the NRC has been effective in refining its approach to the general categories of exemption requests it has received over the decades since licensees first permanently shut down reactors. Existing processes and standards are effective in guiding the staff.

The DPC notes the staff should devote attention to the emerging matter of potential exemptions to the "60 year" provisions of the decommissioning regulatory process for reasons related to but not limited to the fact that decommissioning a site cannot be completed until the Department of Energy removes the spent fuel and GTCC from the industry sites.

Re: advantages and disadvantages of providing an opportunity for the public to weigh in on such exemption requests?

There is no significant new federal action that should trigger an opportunity for a hearing. Decommissioning is a process inherently built into the issuance of a facility license and nothing would be served in safety, security, and financial adequacy by requiring one.

The public has ample opportunities to weigh in on all proposed exemption requests given the effectiveness of community engagement as reflected in NRC's NEIMA Report and the experience

of the sites that have completed decommissioning but for the ISFSI. The NRC has demonstrated its availability and willingness to discuss, in depth, any request that comes forward during the process of decommissioning.

Re: are there other process changes the NRC should consider in determining whether to grant exemptions from the new regulation?

The DPC can think of no reason to make other process changes.

Can you foresee any implementation issues with the proposed rule as it is currently written?
For any new requirement included in the rule, Can you foresee any implementation issues with the proposed rule as it is currently written?

Re: Can you foresee any implementation issues with the proposed rule as it is currently written?

The DPC has long been concerned that there should be an additional Level of spent fuel status that will clarify the distinction between NRC's proposed Level 3 (spent fuel in dry cask while decommissioning is ongoing) and Level 4 (all fuel is gone from the site). In this additional level, the NRC can make clear that such requirements as those pertaining to Certified Fuel Handling Training and CTF authority to make decisions concerning security in extreme weather are not needed as a CFH is not needed at this Level. Also, the NRC can make clear that Part 26 fitness for duty requirements do not apply at this stage.

Guidance documents can be clarified to simply reference what is no longer required once our proposed level 4 is reached. As it stands, there are impediments to implementation due to inconsistencies in guidance documents issued to accompany the proposed rule. Our comments on these in an Enclosure to our letter on the FRN.

The DPC has made these points before in presentations to the NRC and in the letters to the Executive Director for Operations that are included with these answers.

Re: For any new requirement included in the rule, can you foresee any implementation issues with the proposed rule as it is currently written?

Yes. We see a number of issues stemming from the requirement to have the NRC approve the IFMP and treat any changes as license amendment requests. The chief issue is that the goal of making the decommissioning process more efficient will be severely compromised as resources devoted to the process as described can and likely will be disproportionate to the extremely meager benefits to be derived.

We also are concerned about the timing of the completion of the Commission's direction to revise the Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, the implementation of a new Policy Statement and processes with respect to Environmental Justice, and the intended additional attention to environmental matters in the PSDAR.

If the first two are not complete by the time a new or revised PSDAR comes to the Commission, there needs to be at least direction in the form of interim staff guidance, or an endorsed industry guide, or some other base guidance there could be cases where final agency views do not match its interim findings or questions.

Should the NRC address the disparity between specific license and general license ISFSIs as a part of this rulemaking?. Please provide a response regarding this issue and an explanation for your response.

Yes.

The Commission by a separate administrative rule convert all Part 50 general ISFSI licensees into Part 72 licensees once all that remains is the stand-alone ISFSI as well as administratively convert any necessary license changes to accommodate that conversion.

The DPC and the NRC have had discussions on this “disparity” for many years in conferences and seminars dealing with spent fuel management. Given that both specific licensees and general licensees perform essentially the same passive, safe, and secure mission and meet essentially the same requirements, it certainly makes sense that there can be a unified regulatory structure for both.

The DPC has always noted there is little to be gained for a licensee to apply for a change from Part 50 to Part 72 from an operational, resources, and licensing viewpoint, especially given the opportunity for a hearing and intervention that would likely attach to such a request under current regulations.

If as part of this rulemaking, the NRC would define such a change as not rising to the level of activity for which a hearing would be required and for which the resource expenditures would not fall on licensees in terms of additional fees and analyses to be submitted, the DPC would favor such a change. We note that much would depend on the guidance to be utilized by the NRC to effect such a change.

Should additional changes be made to the 10 CFR part 52 appendices as a part of this rulemaking, and would such changes be beneficial to 10 CFR part 52 licensees or add efficiency to the decommissioning process for these facilities? Please provide an explanation for your response.

The DPC does not anticipate having members licensed under Part 52 for some time. We have no opinion at this time.

Should the NRC consider removing the specific requirements from § 52.110(f)–(h) and instead adding a reference in § 52.110 to the identical regulations in § 50.82(a)(6)–(8)? Are there any other provisions in § 52.110 that the NRC should consider removing and replacing with a reference to an identical requirement in § 50.82 (e.g., the decommissioning requirements under § 52.110(c)–(e))? Please provide an explanation for your response.

The DPC does not anticipate having members licensed under Part 52 for some time. We have no opinion at this time.

As part of this rulemaking, are there other license-specific requirements such as in license conditions or orders that have substantively identical generic requirements that should be addressed in this rulemaking? Please provide an explanation for your response.

We learned during the consideration of activities that might have been affected at various points in the COVID-19 crisis that essentially identical facilities sometimes have essentially identical requirements recorded in different licensing spaces. While an effort may be undertaken to harmonize this situation, this need not be part of this rulemaking.

In as much as the ISFSI Security Orders remain in effect, and the Commission has asked for options regarding them, these seem outside the scope of this rulemaking and we will comment on the staff's option in this area as they unfold.

Enclosure

Comments on the Rule Text and Guidance Documents

The DPC has reviewed and supports the comments of the Nuclear Energy Institute on the Rule Text and the Draft Guidance documents and supplements select sections below.

On the Rule Text

As a general matter, the DPC notes the absence in the rule text of definitions of the levels of the graded approach and of Stand-Alone ISFSI/Decommissioned Reactor” upon which this rule depends so much.

26.825(b) Delete this change.

As a general matter, the DPC questions making Part 26 violations a potential criminal matter, but it makes little sense to include all of the revised Section 26.3 if such a program is no longer required once certifications in 26.2(a)(2) are docketed.

50.54(w)(5) add (iii) to read, “Once a licensee site is a “Stand-Alone ISFSI/Decommissioned Reactor” the amount of financial protection can be reduced to \$25,000,000.”

50.54(bb)(1-6) Delete

51.53 Delete the amendment

51.95 Delete the amendment

73.55(p)(1)(i) following, “certified fuel handler,” add, “ or an appropriately trained senior on-shift licensee representative” to authorize suspension of security measures in the event of an emergency or severe weather once all fuel has been off- loaded into dry cask storage and the site has achieved Level 3 status.”

73.55(p)(1)(ii) add, “an appropriately trained senior on-shift licensee representative may authorize suspension of security measures in the event of an emergency or severe whether once all fuel has been off- loaded into dry cask storage and the site has achieved Level 3 status.”

On the Guidance documents

DG- 1346

Our major concern with DG-1346 can be best demonstrated beginning on page 21, “ISFSI Only Emergency Plans,” in that there are 22 separate references back to and or modifications to portions of the guidance addressing, “Permanently Defueled Emergency Plans.”

Given the period sites may expect to be in an ISFSI-only emergency planning posture, it only makes sense that an RG be developed specifically for such plans without creating the burdensome and mistake inviting repetitive page turning that the current draft calls for. Simply write out the intended guidance for such plans in one volume.

Page 21, #3 The DPC believes that the NRC should provide that once sites reach what we would call Level 4, that they could request to convert to a site specific license, which would be granted by administrative rule and that any changes necessary to achieving that action are administrative in nature. That means that this portion of a stand alone DG would need to be redone.

DG-1347

Page 5 Delete the first sentence of the second paragraph under, “**Scope of this Regulatory Guide.**”

Page 6 Delete, “or IFMP,” from the fourth sentence of the first paragraph under, “**Decommissioning Phases.**”

Page 12 Delete Section 3.

Page 23 We suggest the addition of a paragraph that describes that a CFH is no longer required on-site once Level 3 is reached.

DG – 1348

Page 6 The first full paragraph on this page needs revision to properly characterize the NRC review of the PSDAR. Delete the text, “However, should the NRC determine that the PSDAR does not satisfy the information requirements of 10 CFR 50.82(a)(4)(i) or 10 CFR 52.110(d)(1), the agency would inform the licensee in writing, in a request for additional information (RAI), of such deficiencies. The NRC reviews the response to the RAIs to ensure that the updated information meets the regulatory requirements for PSDAR content. As necessary, the NRC will raise any further deficiencies with the licensee in subsequent interactions, including additional letters, public meetings, or onsite inspections. Section C.6 of this guide lists factors that could cause the NRC to find the PSDAR deficient .”

Replace with, “Should the NRC determine that portions of the information indicate need to be further addressed to maintain compliance with 10 CFR 50.82(a)(4)(i) or 10 CFR 52.110(d)(1), the Agency would provide RAIs to ensure the updated information will indicate compliance with those provisions. Section C.6 of this guides list many areas that often are the subject of RAIs.”

Otherwise, the guidance plainly includes a prospect of an NRC finding that the PSDAR is deficient which is simply another way of placing approval authority in the NRC with respect to the PSDAR.

Pages 14 & 15, Section 5 Section 5 should be revised to recognize the prospect that some licensees may have or will have established such panels prior to the submission of the PSDAR.

Page 16 Change the Title of Section 6 to, "Factors that are could be topics of RAIs.

Then change the introductory paragraph to read, "A number of factors could cause the NRC to issue RAIs. These factors are directly related to the topics required to be included in the PSDAR, in accordance with 10 CFR 50.82 and 10 CFR 52.110, as discussed above."