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RULEMAKING ISSUE (Affirmation)

January 31, 2024

FOR: The Commissioners SECY-24-0011

FROM: Raymond V. Furstenau
Acting Executive Director for Operations

SUBJECT: FINAL RULE: REGULATORY IMPROVEMENTS FOR PRODUCTION
AND UTILIZATION FACILITIES TRANSITIONING TO
DECOMMISSIONING (3150-AJ59; NRC-2015-0070)

PURPOSE:

The purpose of this paper is to obtain Commission approval to publish in the *Federal Register* the enclosed notice of a final rule (enclosure 1) to amend Title 10 of the *Code of Federal Regulations* (10 CFR) to revise regulations related to the decommissioning of production and utilization facilities. This paper does not address any new commitments.

SUMMARY:

The final rule would amend the U.S. Nuclear Regulatory Commission's (NRC's) regulations to implement specific regulatory requirements for different phases of the decommissioning process, consistent with the reduced radiological risk as a facility transitions from operations to decommissioning. The amended regulations would incorporate best practices and lessons learned from nuclear power plants that have transitioned to decommissioning and would improve the effectiveness and efficiency of the NRC's regulatory framework.

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Enclosure 5 transmitted herewith contains Official Use Only - Sensitive Internal Information. When separated from Enclosure 5 this transmittal document is decontrolled.

BACKGROUND:

Decommissioning nuclear power reactors are currently subject to many of the same requirements as operating nuclear power reactors, even though decommissioning power reactors have a significantly lower risk of radiological releases, and significantly fewer types of potential accidents, than operating power reactors. As a result, the NRC has allowed incremental changes to various requirements for decommissioning power reactors—including emergency preparedness (EP), physical security, cybersecurity, and insurance coverage—through exemptions and license amendments to reflect this reduced risk. This rulemaking would establish specific regulatory requirements for different phases of the decommissioning process, consistent with the reduced radiological risk. The updated requirements also incorporate best practices and lessons learned identified by the industry and the NRC, based on experience from plants that have transitioned from operation to decommissioning. These changes would improve the effectiveness and efficiency of the regulatory framework for future plants entering decommissioning.

The NRC staff previously sought public feedback on this activity through an advance notice of proposed rulemaking and a draft regulatory basis in 2015 and 2017, respectively.

On March 3, 2022, the NRC published a proposed rule (87 FR 12554) and provided a comment period of a total of 180 days, including a 105-day extension (87 FR 29840). The public comment period for the proposed rule ended on August 30, 2022. The NRC received over 2,000 public comment submissions including approximately 120 unique comments and comments through several form letter campaigns. The NRC staff has considered and addressed all public comments as part of the final rule.

DISCUSSION:

Overview of Changes to NRC Regulations—Major provisions of this rule include changes to 10 CFR Parts 20, 26, 50, 51, 52, 72, 73, and 140 in the areas described below.

1. Emergency Preparedness

This final rule would offer an alternative, graded approach to current requirements for onsite and offsite radiological EP for nuclear power reactors undergoing decommissioning and would eliminate the need for licensees to request license amendments and exemptions from regulations to make changes to their emergency plan during the transition from operation to decommissioning. This approach provides four distinct levels of emergency planning requirements that allow for a transition from an operating reactor emergency plan to when an emergency plan is no longer required due to the removal of the reactor's spent fuel from the site. This graded approach to EP gradually reduces the requirements for an emergency plan as the radiological risk at the site decreases. These requirements include spent fuel pool monitoring, hostile action-based preparedness activities, emergency action levels, and offsite emergency planning requirements. In addition, the final rule would amend the emergency plan change management process in paragraph (q) of 10 CFR 50.54, "Conditions of licenses," to provide an opportunity for licensees to implement changes to their emergency plans when these changes are based upon changes made to site systems, structures, or components evaluated in accordance with 10 CFR 50.59, "Changes, tests, and experiments" (i.e., the plan changes would not result in a reduction in the effectiveness of the emergency plan).

Section III.A of enclosure 1 (pages 52–107) contains additional information about this topic.

2. Physical Security

This final rule would amend the NRC's regulations to eliminate the need for licensees to request approval through exemptions and amendments to make certain adjustments to their physical security programs during decommissioning. Specifically, the rule would clarify which personnel may direct the suspension of security measures in the event of an emergency, such as severe weather or plant emergencies; allow removal of the control room as a vital area; allow removal of security communication capability with the control room; revise the process by which licensees change their security plans; and enable the use of the requirements in 10 CFR 73.51, "Requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste," for the independent spent fuel storage installation (ISFSI) physical security requirements. The rule also would allow licensees to remove prevention of significant core damage as one of the security objectives after fuel is removed from the reactor core.

Section III.B of enclosure 1 (pages 107–116) contains additional information about this topic.

3. Cybersecurity

This final rule would provide that the NRC's cybersecurity requirements in 10 CFR 73.54, "Protection of digital computer and communication systems and networks," continue to apply to a nuclear power reactor licensee when the licensee enters decommissioning until there has been sufficient decay of the fuel in the spent fuel pool such that it would not reach ignition temperature within 10 hours after a complete loss of cooling water and no heat loss from the fuel (i.e., under adiabatic heat up conditions). Once these conditions are met, a licensee's digital computer and communications systems would no longer be subject to the cybersecurity requirements in 10 CFR 73.54. Continued application of 10 CFR 73.54 into decommissioning would be a new requirement for power reactor licensees because cybersecurity requirements currently do not apply to nuclear power reactor licensees once they enter decommissioning. However, holders of operating licenses under 10 CFR Part 50 have a cybersecurity license condition requiring the licensee to maintain its cybersecurity plan until the license is terminated or the license condition is removed by license amendment. This final rule would provide for the removal of the cybersecurity license condition after the spent fuel decay period has elapsed. This change would eliminate the need for 10 CFR Part 50 licensees to request removal of that license condition through a license amendment request. For holders of combined licenses (COLs) under 10 CFR Part 52, the final rule would extend into decommissioning the requirement to maintain a cybersecurity plan. These licensees do not have a cybersecurity license condition, so this change would affect the issue finality of those COLs. The staff addresses this in the "Backfitting and Issue Finality Considerations" section of this paper.

Section III.C of enclosure 1 (pages 117–120) contains additional information about this topic.

4. Drug and Alcohol Testing

This final rule would correct an inconsistency in the applicability of the NRC's 10 CFR Part 26 regulations for fitness-for-duty programs with respect to 10 CFR Part 50 and Part 52 licensees. Specifically, the final rule would clarify that 10 CFR Part 26 no longer applies to a 10 CFR Part 52 licensee once the NRC has docketed the licensee's certifications of permanent cessation of operations and permanent removal of all fuel from the reactor vessel (which is already the case for 10 CFR Part 50 licensees). This change eliminates the need for 10 CFR Part 52 licensees to request an exemption from 10 CFR Part 26 to remove fitness-for-duty requirements when a plant is transitioning to decommissioning. The final rule would also correct an inconsistency in

the criminal penalties in paragraph (a) of 10 CFR 26.825, "Criminal penalties." Specifically, the final rule would include 10 CFR 26.3, "Scope," as a provision subject to criminal penalties if violated because it includes a substantive requirement for certain entities to comply with requirements in 10 CFR Part 26 by a specific deadline. Finally, the rule would clarify the fitness-for-duty program elements that must be incorporated into a licensee's insider mitigation program in paragraph (b)(9)(ii)(B) of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage."

Section III.D of enclosure 1 (pages 120–126) contains additional information about this topic.

5. Certified Fuel Handler Definition and Elimination of Licensed Operators and the Shift Technical Advisor

This final rule would add an alternative definition for "certified fuel handler" to eliminate the need for nuclear power reactor licensees to seek the Commission's approval of a fuel handler training program. This final rule would also clarify that licensed operators (i.e., operators and senior operators) and a shift technical advisor are not required for decommissioning nuclear power reactors. Further, it would clarify that training programs under § 50.120 for the categories of nuclear power plant personnel listed in § 50.120(b)(2) are also not necessary for a decommissioning plant.

Section III.E of enclosure 1 (pages 126–131) contains additional information about this topic.

6. Decommissioning Funding Assurance

This final rule would make several changes regarding decommissioning funding for nuclear power reactors. It would modify the biennial decommissioning trust fund reporting frequency for operating reactors to be consistent with the 3-year reporting frequency for ISFSI decommissioning funding. Regarding ISFSI funding reports, the final rule would allow licensees to combine the reports required by 10 CFR 50.82, "Termination of license," and 10 CFR 72.30, "Financial assurance and recordkeeping for decommissioning," and it would remove the requirement for NRC approval of ISFSI reports. The final rule would clarify that when a licensee identifies a funding shortfall in the report required by paragraph (f)(1) of 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," then the next decommissioning funding status report for licensees that are not "electric utilities" as defined in 10 CFR 50.2, "Definitions," or the decommissioning funding status report two reports later for licensees that are electric utilities, may not have a shortfall. The final rule would also align the decommissioning financial assurance reporting requirements for general license ISFSIs when reactor decommissioning has been completed and the 10 CFR Part 50 license reduced to only cover the remaining ISFSI, with the reporting requirements for specific license ISFSIs, which is once every 3 years. The final rule would also make administrative changes to ensure consistency with the NRC's requirements regarding the submission of notifications and to eliminate a redundancy in the regulations.

Section III.F of enclosure 1 (pages 131–140) contains additional information about this topic.

7. Offsite and Onsite Financial Protection Requirements and Indemnity Agreements

This final rule would allow certain nuclear power reactor licensees in decommissioning to reduce the onsite and offsite insurance amounts they are required to maintain without obtaining exemptions from the NRC's regulations.

Section III.G of enclosure 1 (pages 141–146) contains additional information about this topic.

8. Environmental Considerations

This final rule would state that the licensee's post-shutdown decommissioning activities report (PSDAR) must discuss whether the environmental impacts of site-specific decommissioning activities will be bounded by appropriate federally issued environmental review documents and the licensee's reasons for reaching that conclusion, and describe any decommissioning activities whose environmental impacts will not be so bounded and will be evaluated prior to the performance of the activities. This final rule would clarify that appropriate federally issued environmental review documents may be used instead of only environmental impact statements.

Section III.H of enclosure 1 (pages 146–154) contains additional information about this topic.

9. Record Retention Requirements

This final rule would remove certain record retention requirements for structures, systems, and components that no longer remain in service during decommissioning and would remove requirements to keep multiple copies of certain spent fuel storage records.

Section III.I of enclosure 1 (pages 154–161) contains additional information about this topic.

10. Low-Level Waste Transportation

This final rule would allow a 90-day window before a licensee would be required to notify the NRC that a shipment of low-level radioactive waste had not yet reached the intended destination (disposal facility). This increase from the current 20-day notification window is based on operating experience that shows that 90 days is an appropriate amount of time to allow for completion of a low-level radioactive waste shipment. These shipments are typically made by rail, and the licensee has limited control over the transportation timetable; however, the requirement to provide real-time tracking and monitoring of each low-level radioactive waste shipment until it reaches the disposal facility would remain in place.

Section III.J of enclosure 1 (pages 161–164) contains additional information about this topic.

11. Spent Fuel Management Planning

This final rule would merge the irradiated fuel management plan (IFMP) provisions into the PSDAR provisions. This change would require a power reactor licensee to provide planning information for decommissioning and spent fuel management in one report. The resulting PSDAR would ensure that a licensee's decommissioning plans and spent fuel management plans are aligned and would enable efficient stakeholder engagement and NRC review and oversight. This approach would also increase transparency and openness by expanding the public notice, comment period, and meeting already required for PSDARs to the spent fuel

management information in IFMPs, thereby providing opportunities for stakeholder engagement on this information that do not exist under the current regulations. This would be a change from the proposed rule, as discussed in the “Changes from Proposed Rule to Final Rule” section of this paper.

Section III.K of enclosure 1 (pages 164–172) contains additional information about this topic.

12. Backfit Rule

This final rule would clarify how the NRC applies 10 CFR 50.109, “Backfitting,” to regulatory actions affecting nuclear power reactor licensees in decommissioning and would make conforming changes to 10 CFR 72.62, “Backfitting.”¹

Section III.L of enclosure 1 (pages 172–177) contains additional information about this topic.

13. Foreign Ownership, Control, or Domination

This final rule would specify the criteria for when a facility is no longer considered a production or utilization facility. These criteria are (1) the 10 CFR Part 50 or 10 CFR Part 52 license no longer authorizes operation of the facility and (2) the facility has been modified to be incapable of producing or utilizing, as appropriate, special nuclear material without significant alterations. At this point, the prohibition for foreign ownership, control, or domination found in 10 CFR 50.38, “Ineligibility of certain applicants,” would no longer apply to a person seeking a license for the facility. This change would eliminate the need for requests for an exemption from 10 CFR 50.38 for a foreign entity to apply for and obtain licenses, including via license transfer, for facilities that no longer meet the definition of a production or utilization facility.

Section III.M of enclosure 1 (pages 177–186) contains additional information about this topic.

14. Clarification of Scope of License Termination Plan Requirement

This final rule would clarify that the requirement for a license termination plan in 10 CFR 50.82(a)(9) and paragraph (i) of 10 CFR 52.110, “Termination of license,” applies only to nuclear power reactor licensees that have loaded fuel into the reactor vessel.

Section III.N of enclosure 1 (pages 186–188) contains additional information about this topic.

15. Removal of License Conditions and Withdrawal of Order

This final rule would deem removed certain license conditions imposed upon individual licensees and withdraw an NRC order related to mitigation strategies for large fires or explosions at nuclear power plants. Rulemakings that occurred after issuance of the conditions and order made the requirements of the conditions and order generically applicable and, thus, redundant with the newer regulations.

Section III.O of enclosure 1 (pages 188–191) contains additional information about this topic.

¹ The final rule would not include a change to 10 CFR 70.76, “Backfitting,” because that provision does not apply to NRC actions affecting a decommissioning facility licensed under 10 CFR Part 70, “Domestic Licensing of Special Nuclear Material,” for which Part 70, Subpart H, “Additional Requirements for Certain Licensees Authorized to Possess a Critical Mass of Special Nuclear Material,” is applicable. Under 10 CFR 70.60, “Applicability,” such a facility is not within the scope of the Part 70 backfitting provision.

16. Changes for Consistent Treatment of Holders of Combined Licenses and Operating Licenses

This final rule would improve consistency in regulatory treatment for holders of COLs and operating licenses by aligning the regulations that apply to COL holders upon submittal of the decommissioning certifications required under 10 CFR 52.110(a) with the regulations that apply to operating license holders upon submittal of the decommissioning certifications required under 10 CFR 50.82(a)(1).

Section III.P of enclosure 1 (pages 191–192) contains additional information about this topic.

Changes from Proposed Rule to Final Rule—The NRC staff is recommending the following changes in the final rule:

- Irradiated fuel management plan. In the proposed rule, the NRC proposed to require submittal of the IFMP and any changes to the IFMP as license amendment requests. This proposed change was intended to address the current IFMP approval provision in 10 CFR 50.54(bb), which is outdated. The NRC received many public comments on the IFMP topic, particularly the NRC proposal to require approval of an IFMP through a license amendment. The NRC staff agrees with many of these comments that explained why the IFMP should not be approved by license amendment. The staff recommends merging the IFMP provisions into the PSDAR provisions, so that the planning information on decommissioning and spent fuel management would be in one consolidated report. This would align licensees' decommissioning plans and spent fuel management plans, as well as the NRC's review of, oversight for, and public engagement on those plans.
- Emergency preparedness. The final rule does not include significant changes to the EP provisions in the proposed rule. However, the NRC staff recommends merging proposed 10 CFR 50.54(q)(8)(ii) and (iii) to create a new 10 CFR 50.54(q)(9)(ii) that will include in one provision the criteria a decommissioning licensee needs to meet to change its emergency plan or emergency action levels without prior approval of the NRC. In response to public comments, the NRC staff would also make some minor changes to the EP regulatory guide that will accompany the final rule.
- Other changes. The final rule includes other minor changes from the proposed rule as discussed in the *Federal Register* notice. For example, the final rule would extend the receipt notification window for shipments of low-level waste from 45 days in the proposed rule to 90 days.

Other Areas of Interest—

- Post-shutdown decommissioning activities report. The final rule would continue the current practice of NRC review, but not approval, of the PSDAR. The primary purpose of the PSDAR is to serve as a planning and oversight tool for the licensee and the NRC to understand the overall process, schedule, and costs associated with decommissioning the site, and to plan inspection and licensing resources accordingly. There is no indication that NRC approval of a PSDAR, instead of just a review, would increase public health and safety over the current approach. The PSDAR also provides information on the previous environmental reviews conducted for each site. Under 10 CFR 50.82(a)(6)

and 10 CFR 52.110(f), licensees would be prohibited from taking decommissioning actions that result in significant environmental impacts not bounded by appropriate federally issued environmental review documents. This provision helps ensure that unbounded site-specific environmental impacts do not occur during the decommissioning process. The PSDAR and the related public meeting held near the site are also intended to foster early public involvement in the decommissioning process by discussing the licensee's plans before major decommissioning activities occur. If the NRC staff identifies any deficiencies in the PSDAR, the staff would request additional technical information from the licensee to address regulatory compliance or safety concerns.

- Discharges of radioactive effluent. The NRC received public comments expressing concerns about "discharges of radioactive effluent" at the Pilgrim Nuclear Power Station and the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3. These comments stated that without an environmental review early in the decommissioning process, there is no evaluation of the discharges under the National Environmental Policy Act (NEPA) until review of the license termination plan, at which point the discharges would have already occurred. The final rule package discusses how the NRC meets its obligations under NEPA. Namely, while radiological effluents are regulated by the NRC, non-radiological effluent discharges are regulated under a Clean Water Act permit issued by the U.S. Environmental Protection Agency or delegated to the State. Furthermore, the NRC will consider site-specific environmental issues raised by commenters about decommissioning nuclear power plant sites as part of its update to NUREG-0586, Supplement 1, "Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities: Regarding the Decommissioning of Nuclear Power Reactors," issued November 2002, which will proceed separately from this rulemaking according to published schedules.

Regulatory Analysis—The NRC staff prepared a regulatory analysis (enclosure 3) to determine anticipated costs and benefits of the final rule. In particular, the regulatory analysis evaluates the costs and benefits associated with new requirements and NRC guidance. This analysis shows that the NRC staff's recommendation for rulemaking and guidance in each area of the decommissioning rulemaking is overall cost-beneficial to the nuclear industry, the NRC, and society.

Stakeholder Engagement—The NRC staff held six public meetings during the proposed rule public comment period. Section IV of enclosure 1 (page 192) contains additional information about this topic.

Implementation Guidance—The NRC staff developed four regulatory guides (RGs) to support implementation of the final rule: RG 1.235, "Emergency Planning for Decommissioning Nuclear Power Reactors"; RG 1.184, Revision 2, "Decommissioning of Nuclear Power Reactors"; RG 1.159, Revision 3, "Assuring the Availability of Funds for Decommissioning Production or Utilization Facilities"; and RG 1.185, Revision 2, "Standard Format and Content for Post-Shutdown Decommissioning Activities Report."

Backfitting and Issue Finality Considerations—Except for a change to 10 CFR 73.54 that affects the issue finality of COLs (discussed in the next paragraph), none of the changes in this final rule would constitute backfitting or affect the issue finality of a COL for existing licensees. Many of the changes would not constitute backfitting or affect the issue finality of a COL because they are non-mandatory relaxations of existing requirements. As explained in Management Directive

8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests," non-mandatory relaxations of regulations generally do not meet the definition of "backfitting" in 10 CFR 50.109(a)(1). The final rule also includes certain regulations that would provide an alternative set of requirements for power reactor licensees during decommissioning. Because these optional requirements would not be imposed upon licensees and would not prohibit licensees from following existing requirements, the requirements would not constitute backfitting or affect issue finality. The remaining changes in this final rule would not constitute backfitting or affect the issue finality of a COL because, aside from not being non-mandatory relaxations of existing requirements or voluntary alternative requirements, they would not meet the definition of "backfitting."

One aspect of the final rule, the changes to the cybersecurity requirements for 10 CFR Part 52 licensees, would affect the issue finality of existing COLs. Requiring current holders of COLs to maintain their cybersecurity plan into the decommissioning phase would be a new requirement. Under the applicable issue finality provisions of 10 CFR Part 52, the NRC must show that this rule change would meet the requirements of 10 CFR 50.109 to justify proceeding with this change. The NRC staff concludes that the changes would provide a substantial increase in protection of public health and safety and the common defense and security by ensuring that the digital systems relied upon by the licensees' physical security and EP programs would be protected from a cyberattack during the time when a spent fuel pool draindown scenario can credibly lead to a zirconium fire. These digital systems are an essential element of a licensee's security program because they, among other things, (1) reduce the likelihood of a successful physical attack on the licensee's facility and (2) enable the licensee to notify pertinent agencies, communicate with offsite response organizations, disseminate information to the public, and assess conditions during an emergency. As described in Section IX.C of enclosure 1, the NRC staff finds that this substantial increase in protection would justify the costs that would accrue to the affected licensees. Therefore, the rule change would be justified under 10 CFR 50.109(a)(3).

RECOMMENDATION:

The NRC staff recommends that the Commission take the following actions:

- (1) Approve the enclosed final rule (enclosure 1) for publication in the *Federal Register*.
- (2) Certify that this rule, if adopted, will not have a significant impact on a substantial number of small entities, to satisfy the requirement of the Regulatory Flexibility Act (5 U.S.C. 605(b)).
- (3) Note the following:
 - a. The final rule contains amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The staff will submit the collections of information contained in the final rule to the Office of Management and Budget for its review and approval before the publication of the final rule in the *Federal Register*.
 - b. The rulemaking package includes a public comment resolution document (enclosure 2), a regulatory analysis (enclosure 3), and an environmental assessment (enclosure 4) for this final rule.

- c. RG 1.235; RG 1.184, Revision 2; RG 1.159, Revision 3; and RG 1.185, Revision 2, will be issued concurrent with the publication of the final rule.
- d. The Office of Congressional Affairs will inform the appropriate congressional committees of this action.
- e. The staff will work with the Office of Public Affairs on an appropriate public communication when the NRC publishes the final rule in the *Federal Register*.

RESOURCES:

The decommissioning rulemaking activities are appropriately budgeted in the Operating Reactors Business Line. Enclosure 5 includes an estimate of the NRC resources needed to complete this rulemaking.

COORDINATION:

The Office of the General Counsel reviewed this package and has no legal objection to the publication of the final rule. The Office of the Chief Financial Officer reviewed this package and has no concerns with the estimated resources in enclosure 5. The Committee to Review Generic Requirements has reviewed the backfitting and issue finality assessment for this final rule and has no objections.



Raymond V. Furstenau
Acting Executive Director
for Operations

Enclosures:

1. Rulemaking: Final Rule: FR Notice, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (3150-AJ59; NRC-2015-0070)
2. Rulemaking: Final Rule: Responses to Public Comments, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (3150-AJ59; NRC-2015-0070)
3. Rulemaking: Final Rule: Regulatory Analysis, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (3150-AJ59; NRC-2015-0070)
4. Rulemaking: Final Rule: Environmental Assessment, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (3150-AJ59; NRC-2015-0070)
5. Rulemaking: Final Rule: Estimated Resources, Regulatory Improvements for Production and Utilization Facilities Transitioning to Decommissioning (3150-AJ59; NRC-2015-0070) (nonpublic)

SUBJECT: FINAL RULE: REGULATORY IMPROVEMENTS FOR PRODUCTION AND UTILIZATION FACILITIES TRANSITIONING TO DECOMMISSIONING (3150-AJ59; NRC-2015-0070) DATED: January 31, 2024

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