

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-14-0072 – FINAL RULE: CONTINUED
STORAGE OF SPENT NUCLEAR FUEL (RIN 3150-
AJ20)

Approved XX Disapproved Abstain

Not Participating

COMMENTS: Below Attached XX None



SIGNATURE

08/01/14
DATE

Entered on "STARS" Yes ✓ No

Commissioner Svinicki's Comments on SECY-14-0072
Final Rule: Continued Storage of Spent Nuclear Fuel (RIN 3150-AJ20)

I approve for publication in the *Federal Register* the notice of final rulemaking (Enclosure 1) and approve for publication the final generic environmental impact statement (GEIS) (Enclosure 2), subject to the comments and edits enclosed herewith. I further certify that this rule, if promulgated, will not have significant impact on a substantial number of small entities.

Having served on this Commission for some time now, and having left a wake of rather candid votes trailing behind me, the NRC staff has likely discerned that I am loathe to withhold any well-founded (at least in my view) criticism of the agency's work if I am convinced that we can do better. My tendency to do this is rooted in my beliefs that – without challenge – we do not strive ceaselessly to be better than we are now and that the NRC – through its people – is capable of accomplishments that rival those of any high performing organization in government or outside of it.

With that as prelude, let me express that the work placed before this Commission in the form of the draft final rule and GEIS would qualify as superior efforts under any circumstances and, when viewed through the prism of the circumstances and schedules which existed here, move into the realm of true and extraordinary achievement. I convey my gratitude to the Waste Confidence Directorate, the Office of General Counsel, and each of the technical staff and administrative professionals who contributed to this effort from across the agency. I hope you take justifiable pride in the work you have done.

I join other members of the Commission in approving these documents for publication with only modest proposed edits. On the broad question of changing the title of this effort, I note that as a prior skeptic on the idea of abandoning the phrase "Waste Confidence," even I must now conclude that continuing to hang that label on these documents would serve to obscure the path we have followed rather than illuminate it. It simply doesn't fit anymore.

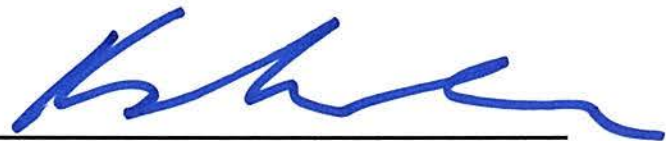
With respect to the *Federal Register* notice, I have enclosed a set of change pages with proposed minor edits to improve clarity, to conform the language more precisely to the source from which it is derived, or to correct minor errors.

With respect to the GEIS, although it is fulsome and compelling as written, there are a handful of instances where inserting material provided elsewhere in the GEIS itself or found in other reference documents would strengthen a point or provide needed context. In this vein, I propose the following amendments.

- In Chapter 1, on page 1-16, the GEIS states that the NRC assumed the continued efficacy of institutional controls throughout its evaluation to allow the NRC to "reliably forecast" environmental impacts. Although the efficiency of agency processes is certainly important, this assumption should be fortified with a more significant basis. In Appendix B.3.4 (page B-25), the GEIS states that "the most reasonably foreseeable assumption is that institutional controls will continue." The staff should provide this justification on page 1-16, as well as a cross reference to the supporting analysis in Section B.3.4 of Appendix B.
- In Chapter 2, the GEIS provides detailed "construction costs for continued storage facilities, as well as costs (e.g., rail spurs) for transporting spent fuel to an away-from-reactor ISFSI during continued storage." Without context, this and other statements in

Chapter 2 suggest that these costs will be incurred. However, elsewhere in the GEIS, the NRC notes, "These cost estimates do not represent an NRC expectation that continued storage costs will occur indefinitely, given the NRC's expectation of repository availability within the short-term timeframe." (page D-500) The staff should provide this, or a similar statement, in Chapter 2 to provide additional context on these estimated costs.

- In Chapter 4, on page 4-96, the GEIS addresses the potential environmental impacts of theft and diversion of spent fuel leading to the hypothetical development of an improvised nuclear device (IND). However, Chapter 4 does not include the conclusion of the NRC that the potential for creation of a device is exceedingly remote due to various technical barriers to its development. The staff should augment the IND-related discussion in Chapter 4 to include additional context and information similar to that provided on pages D-366 and D-367 of Appendix D in response to a comment, clarifying that, in addition to the NRC considering the theft of SNF not credible, the NRC considers the potential for the creation of an IND after a successful attack even more remote because of certain impediments, including that the manufacture of even a crude IND would require major chemical and metallurgical processing steps.
- In Chapter 7, on page 7-8, the GEIS describes the benefits of the proposed action in terms of efficiency. While this is accurate, the GEIS omits another important consideration: fairness. Adopting the proposed action is in keeping with the Commission's long-stated preference for resolving generic issues generically. Restructuring of Facility License Application Review and Hearing Process, 37 Fed. Reg. 15,127, 15,129 (July 28, 1972). This approach allows all interested parties an opportunity to comment on the proposed generic resolution, through the rulemaking process. In contrast, the no-action alternative, in which continued storage issues are litigated on a case-by-case basis, would yield a body of binding precedent regarding these issues that is informed only by the issues advanced by the parties in those cases. The staff should add a statement on page 7-8 noting these points.



Kristine L. Svinicki

08/01/14

[7590-01-P]

| [KLS Edits](#)

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[NRC-2012-0246]

RIN 3150-AJ20

Continued Storage of Spent Nuclear Fuel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U. S. Nuclear Regulatory Commission (NRC) is revising its generic determination regarding the environmental impacts of the continued storage of spent nuclear fuel beyond a reactor's licensed life for operation and prior to ultimate disposal. The NRC prepared a final generic environmental impact statement that provides a regulatory basis for this final rule. The Commission concludes that the generic environmental impact statement generically and conclusively determines the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor. The final rule also clarifies that the generic determination applies to license renewal for an independent spent fuel storage installation (ISFSI), reactor construction permits, and early site permits. The final rule clarifies how the generic determination will be used in future NRC environmental reviews, and makes changes to improve readability. Finally, the final rule makes conforming amendments to the determinations on the environmental effects of renewing the operating license of a nuclear power plant to address issues related to the onsite storage of spent nuclear fuel and offsite radiological impacts of spent nuclear fuel and high-level waste disposal.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Please refer to Docket ID NRC-2012-0246 when contacting the NRC about the availability of information for this final rule. You may access publicly-available information related to this final rule by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0246. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

- **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, [at 301-415-4737](tel:301-415-4737), or by e-mail to pdresource@nrc.gov. The ADAMS accession number for each document referenced in this final rule (if that document is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

- **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: Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-9167; e-mail: Merri.Horn@nrc.gov.

SUPPLEMENTARY INFORMATION:

EXECUTIVE SUMMARY:

A. Need for the Regulatory Action

The purpose of this final rule (rule) is to ~~improve~~ preserve the efficiency of the NRC's licensing process by adopting into the NRC's regulations the Commission's generic determinations of the environmental impacts of the continued storage of spent nuclear fuel (spent fuel) beyond the licensed life for operations of a reactor (continued storage). The NRC has prepared a final generic environmental impact statement that addresses the environmental impacts of continued storage and provides a regulatory basis for this rule. This rule codifies the results of the analyses from the generic environmental impact statement in § 51.23 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operations of a reactor." The NRC's licensing proceedings for nuclear reactors and ISFSIs have historically relied upon the generic determination in 10 CFR 51.23 to satisfy the agency's obligations under the National Environmental Policy Act (NEPA) with respect to the narrow area of the environmental impacts of continued storage. Environmental impact statements for future reactor and spent-fuel-storage facility licensing actions will not separately analyze the basis for the environmental impacts of continued storage and, as discussed in 10 CFR 51.23, the impact determinations from the generic environmental impact statement are deemed to be incorporated into these environmental impact statements. Environmental assessments for future reactor and spent-fuel-storage facility licensing actions will consider the environmental impacts of continued

storage, if the impacts of continued storage of spent fuel are relevant to the proposed action.

B. Major Provisions

The major changes to the rule are summarized as follows:

- The heading of 10 CFR 51.23 is revised to "Environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor."

- Paragraph (a) of 10 CFR 51.23 is revised to provide the Commission's generic determination regarding the continued storage of spent nuclear fuel. The amendments state that the Commission has generically and conclusively determined that the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor are those impacts identified in NUREG-2157, "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel" (GEIS).

- Paragraph (b) of 10 CFR 51.23 is revised to clarify that license renewals for ISFSIs, reactor construction permits, and early site permits are included in the scope of the generic determination. The rule also makes changes to improve readability and to clarify that applicants do not need to address continued storage in their environmental reports. The rule also clarifies that the NRC shall deem the impact determinations in NUREG-2157 regarding continued storage of spent fuel to be incorporated into environmental impact statements (EIS) and that the impact determinations shall be considered in environmental assessments (EA), if the impacts of continued storage are relevant to the proposed action.

- Conforming changes are made to 10 CFR 51.30, 51.50, 51.53, 51.61, 51.75, 51.80, 51.95, and 51.97 to clarify that ISFSI license renewals, construction permits, and early site permits are included in the scope of the generic determination, improve readability, clarify that applicants do not need to address continued storage in their environmental reports, clarify that the NRC shall consider the impact determinations in certain EAs, and clarify that the impact

A12. What Is the Status of the Extended Storage Effort?

A13. How Can the NRC Proceed With this Rulemaking While Research on the Extended Storage of Spent fuel Is Ongoing?

A14. How Frequently Does the NRC Plan to Revisit the GEIS and Rule?

B. Rulemaking

B1. What Is the Purpose of This Rulemaking?

B2. What Is Meant by the Phrase "Licensed Life for Operation of a Reactor?"

B3. What Timeframes Are Considered in the GEIS?

B4. What Are the Key Assumptions Used in the GEIS?

B5. How Will Significant Changes in These Assumptions Be Addressed Under the NRC's Regulatory Framework?

B6. What Is the Significance of the Levels of Impact in the GEIS (SMALL, MODERATE, LARGE)?

B7. What Are the Environmental Impacts of At-Reactors Continued Storage?

B8. What Are the Environmental Impacts of Away-from-Reactors Continued Storage?

B9. Does a Potentially LARGE Impact or a Range of Impacts Affect the Generic Determination in the GEIS?

B10. How Does the Rule Address the Impacts from Continued Storage of Spent Fuel?

B11. What Clarifying Changes Are Addressed in the Rule?

B12. What Changes in this Rulemaking Address Continued Storage for License Renewal?

C. ~~Repository and Safety Conclusions~~ Conclusions Regarding Technical Feasibility

C1. What Is the Basis of the NRC's Conclusion That a Geologic Repository Is Feasible?

C2. What Is the Basis for the NRC's Conclusion That a Repository Will Be Available?

C3. Does the Rule Address the Feasibility and Timing of a Repository?

C4. What Is the Basis for the NRC's Conclusion Regarding Safe Storage of Spent Fuel in Spent Fuel Pools?

nuclear power reactors can be disposed of without undue risk to public health and safety and to refrain from granting pending or future requests for reactor operating licenses until the NRC made such a determination. The Commission stated in its denial that, as a matter of policy, it "... would not continue to license reactors if it did not have reasonable confidence that the wastes can and will in due course be disposed of safely" (42 FR 34391, 34393; July 5, 1977, pet. for rev. dismissed sub nom., *NRDC v. NRC*, 582 F.2d 166 (2d Cir. 1978)).

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At about the same time, interested parties challenged license amendments that permitted expansion of the capacity of spent fuel pools at two nuclear power plants: Vermont Yankee and Prairie Island. In 1979, the U.S. Court of Appeals for the District of Columbia Circuit, in *Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979), did not stay or vacate the license amendments, but remanded to the Commission the question of whether an offsite storage or disposal solution would be available for the spent fuel at the two facilities at the expiration of their licenses—at that time scheduled for 2007 and 2009—and, if not, whether the spent fuel could be stored safely at those reactor sites until an offsite solution became available.

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In 1979, the NRC initiated a generic rulemaking proceeding that stemmed from these challenges and the Court's remand in *Minnesota v. NRC*. At that time, the purpose of the Waste Confidence rulemaking was to generically assess whether the Commission could have reasonable assurance that radioactive wastes produced by nuclear power plants "can be safely disposed of, to determine when such disposal or offsite storage will be available, and to determine whether radioactive wastes can be safely stored onsite past the expiration of existing facility licenses until offsite disposal or storage is available" (44 FR 61372, 61373; October 25, 1979). On August 31, 1984, the Commission published the Waste Confidence Decision (Decision) (49 FR 34658) and a final rule (49 FR 34688), codified at 10 CFR 51.23. This Decision provided an EA and Finding of No Significant Impact (FONSI) to support the rule. In the 1984 Decision the Commission made five findings (Findings):

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and utilization facilities," to require operating nuclear power reactor licensees to submit their plans for managing spent fuel at their site until the fuel is transferred to the U. S. Department of Energy (DOE) for disposal (see 10 CFR 50.54(bb)).

The Commission conducted its first review of the Decision and rule in 1989 – 1990. This review resulted in the revision of the second and fourth Findings to reflect revised expectations for the date of availability of the first repository, and to clarify that the expiration of a reactor's licensed life for operation referred to the full 40-year initial license for operation and an additional 30 years ~~(which may include the term of a revised or renewed license) under a revised or renewed license~~. On September 18, 1990, the Commission published the revised Decision (55 FR 38474) and the associated final rule (55 FR 38472). The revised Findings 2 and 4 in the 1990 revised Decision were:

Finding 2: The Commission finds reasonable assurance that at least one mined geologic repository will be available within the first quarter of the twenty-first century, and sufficient repository capacity will be available within 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of any reactor to dispose of the commercial high-level radioactive waste and spent fuel originating in such reactor and generated up until that time.

Finding 4: The Commission finds reasonable assurance that, if necessary, spent fuel generated at any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor at its spent fuel storage basin or at either onsite or offsite ISFSIs.

The Commission also amended 10 CFR 51.23(a) to reflect the revised timing of the availability of a geologic repository to the first quarter of the twenty-first century. The rule was also revised to reflect that the licensed life for operation may include the term of a revised or renewed license.

licensed life for operation of a reactor and that sufficient mined geologic repository capacity would be available when necessary.

In response to the 2010 Decision and rule, the States of New York, New Jersey, Connecticut, and Vermont; several public interest groups; and the Prairie Island Indian Community filed a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit that challenged the Commission's compliance with NEPA. On June 8, 2012, the Court ruled that some aspects of the 2010 proceeding did not satisfy the NRC's NEPA obligations and vacated and remanded the Decision and rule (*New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012) (ADAMS Accession No. ML12191A407)). The Court concluded that the Waste Confidence rulemaking is a major federal action necessitating either an EIS or an EA that results in a FONSI. In vacating the 2010 Decision and rule, the Court identified three specific deficiencies in the analysis:

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1. Related to the Commission's conclusion that permanent disposal will be available "when necessary," the Court held that the Commission needed to examine the environmental effects of failing to establish a repository;
2. Related to continued storage of spent fuel, the Court concluded that the Commission had not adequately examined the risk of spent fuel pool leaks in a forward-looking fashion; and
3. Also related to the continued storage of spent fuel, the Court concluded that the Commission had not adequately examined the consequences of potential spent fuel pool fires.

In response to the Court's decision, on August 7, 2012, the Commission stated in Commission Order CLI-12-16 (ADAMS Accession No. ML12220A094) that it would not issue reactor or ISFSI licenses dependent upon the Waste Confidence Decision and rule until the Court's remand is appropriately addressed. The Commission stated, however, that this determination extends only to final license issuance and that all licensing reviews and proceedings should continue to move forward.

In the September 6, 2012, Staff Requirements Memorandum (SRM), "Staff Requirements – COMSECY-12-0016 – Approach for Addressing Policy Issues Resulting from

CFR parts 50 or 54, "Requirements for renewal of operating licenses for nuclear power plants;" issuance of a combined license or early site permit for a nuclear power reactor under 10 CFR part 52, "Licenses, certifications, and approvals for nuclear power plants;" or some amendments of a license under 10 CFR parts 50 or 52. This rule will also affect the issuance of an initial, amended, or renewed license for storage of spent fuel at an ISFSI under 10 CFR part 72, "Licensing requirements for the independent storage of spent nuclear fuel, high-level radioactive waste, and reactor-related greater than Class C waste." The rule could also affect participants in any proceeding addressing these licensing actions.

A5. How Can the NRC Conduct a Generic Review When Spent Fuel Is Stored at Specific Sites?

Since 1984, the NRC has generically addressed the environmental impacts of continued storage through a generic NEPA analysis and rule. Without a generic environmental impact analysis, site-specific consideration of the environmental impacts of continued storage would be necessary. In remanding the 2010 Waste Confidence rule to the NRC for additional analysis, the Court of Appeals for the District of Columbia Circuit continued the long history of federal courts approving a generic approach to the analysis of the environmental impacts of nuclear power reactor operation. In *New York v. NRC*, the Court of Appeals endorsed the NRC's generic approach, stating that there is "no reason that a comprehensive general analysis would be insufficient to examine on-site risks that are essentially common to all plants." (New York, 681 F.3d at 480). After conducting the analysis in the GEIS, the NRC concludes that the impacts of continued storage will not vary significantly across sites, despite variations in site-specific characteristics. Accordingly, the NRC believes that a generic approach is appropriate for this proceeding.

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The NRC has determined in the GEIS that the direct and indirect environmental impacts of continued storage at reactors can be analyzed generically. This means that, for each of the resource areas analyzed in the GEIS, the NRC has reached a generic determination (SMALL,

in impacts that, although unlikely, could be larger than those that are to be expected at most sites and have therefore been presented as ranges rather than as a single impact level. Those uncertainties exist, however, regardless of whether the impacts are analyzed generically or site-specifically. Despite variations in site-specific characteristics, a generic analysis is capable of determining and expressing the environmental impacts that may result from continued storage.

The reasonableness of NRC's determinations about continued storage is supported by numerous environmental reviews of spent fuel storage. Spent fuel storage during the period of operations has been considered in site-specific licensing of new reactors (for spent fuel pools only), ISFSIs, and license renewals. Finally, concerned parties who meet the waiver criteria in 10 CFR 2.335 will be able to raise site-specific issues related to continued storage at the time of a specific license application.

A6. What Types of Wastes Are Addressed by the GEIS and Rule?

The environmental analysis in the GEIS and the rule covers low and high burn-up spent fuel generated in light-water nuclear power reactors. It also covers mixed oxide (MOX) fuel,² since MOX fuel is substantially similar to existing light-water reactor fuel and is, in fact, being considered for use in existing light-water reactors in the United States. It also covers spent fuel from small modular light-water reactors. Small modular light-water reactors being developed will use fuel very similar in form and materials to the existing operating reactors and will not, therefore, introduce new technical challenges to the storage of spent fuel. The environmental analysis in the GEIS also covers the spent fuel from one high-temperature gas-cooled reactor (HTGR) built and commercially operated: Fort Saint Vrain.

² Mixed oxide fuel (often called MOX fuel) is a type of nuclear power reactor fuel that contains plutonium oxide mixed with either natural or depleted uranium oxide in ceramic pellet form.

A7. What Activities Are Not Covered by the GEIS and Rule?

The GEIS and rule do not consider disposal of spent fuel or storage of spent fuel during the licensed life for operation of the power reactor. Additionally, the GEIS and rule do not address foreign spent fuel, non-power reactor spent fuel (e.g., fuel from research and test reactors), defense waste, Greater-than-Class C low-level waste, reprocessing of commercial spent fuel, and or the need for nuclear power.

A8. How Does this Rulemaking Relate to the Licensing of Future Away-from-Reactor ISFSIs?

The GEIS and rule do not satisfy the NRC's obligations under NEPA to analyze the environmental impacts of spent fuel storage during the term of a facility's license. The NRC must conduct a site-specific environmental analysis to support the licensing of any future away-from-reactor ISFSI. The NRC cannot use the rule and GEIS as a substitute for the environmental analysis associated with constructing and operating an away-from-reactor ISFSI. The site-specific NEPA analysis for an away-from-reactor ISFSI can only rely on the analysis in the GEIS and the requirements in the rule to satisfy the NRC's NEPA obligations with respect to the storage of spent fuel during the applicable continued storage period.

A9. Will the Rulemaking Authorize the Storage of Spent Fuel at the Operating Reactor Site Near Me?

No, the rule does not authorize the storage of spent fuel at any site. The rule reflects only the generic environmental analysis for the period of spent fuel storage beyond a reactor's licensed life for operation and before disposal in a repository. This proceeding is not a substitute for licensing actions that typically include site-specific NEPA analysis and site-specific safety analyses (see also question A10).

In addition, the NRC's GEIS and final rule do not pre-approve any particular waste storage or disposal site technology, nor do they require that a specific cask design be used for

determinations in NUREG-2157 in the EA, if the impacts of continued storage of spent fuel are relevant to the proposed action. This means that NUREG-2157 provides the determinations of the environmental impacts of continued storage to be used in site-specific environmental reviews. No additional analysis of the impacts of continued storage is required.

The findings of the site-specific environmental review may be challenged during the initial licensing of a facility and at license renewal. As a result of this rulemaking, what may not be considered in those proceedings—due to the generic determination in 10 CFR 51.23(a)—are the environmental impacts of continued storage of spent fuel beyond the licensed life for operation of the reactor contained in NUREG-2157. The NRC's regulations at 10 CFR 2.335, however, allow participants in NRC's licensing proceedings to request that a rule, including 10 CFR 51.23, not be applied, or be waived, in a particular proceeding because special circumstances are present that would prevent the application of the rule from satisfying the purpose of the rule.

The GEIS and rule are applicable only to future NRC licensing actions and do not apply to completed licensing actions.

A11. Why Is There Not a Separate Waste Confidence Decision Document?

Historically, the Waste Confidence Decision contained five "Findings" that addressed the technical feasibility of a mined geologic repository, the degree of assurance that disposal would be available by a certain time, and the degree of assurance that spent fuel and high-level waste could be managed safely without significant environmental impacts for a certain period beyond the expiration of plants' operating licenses. Preparation of and reliance upon a GEIS is a fundamental departure from the approach used in past proceedings. The GEIS acknowledges the uncertainties inherent in a prediction of repository availability and provides an environmental analysis of three timeframes, including one where a repository does not become available.

impacts, to the environmental impacts of reasonable alternatives, including the no-action alternative.

B2. What Is Meant by the Phrase "Licensed Life for Operation of a Reactor"?

The phrase "licensed life for operation of a reactor" refers to the term of the license to operate a reactor. The GEIS assumes an original licensed life of 40 years and up to two 20-year license extensions³ for each reactor, for a total of up to 80 years of operation. The phrase, "beyond licensed life for operation of a reactor," refers to the period beyond the initial license term to operate a reactor and, if the license is extended, beyond the renewed license term. The date of permanent cessation of operations (shut down) does not necessarily mark the transition to "beyond licensed life for operation." Because the continued storage analysis informs the larger NEPA analysis that occurs before a license is issued, even if a reactor is shut down years before the end of its initial or extended license term, "licensed life for operation" continues to refer to the initial or renewed license term, and not the actual operational period of a reactor. The environmental analysis supporting spent fuel storage during the licensed life for operation of each reactor covers the full period for which the license or license renewal was issued, even if operation of the reactor ended before the license expired. Thus, continued storage begins at the end of the licensed life for operation of a reactor. The starting point for continued storage does not depend on whether the spent fuel is stored in a spent fuel pool, dry casks under a general license, or dry casks under a specific license.

B3. What Timeframes Are Considered in the GEIS?

The NRC has analyzed three timeframes in the GEIS that represent various scenarios for the length of continued storage that may be needed before spent fuel is sent to a repository.

³ The Commission's regulations provide that renewed operating licenses may be subsequently renewed, although no licensee has yet submitted an application for such a subsequent renewal. The GEIS ~~includes~~ assumes two renewals ~~as a conservative assumption~~ in evaluating potential environmental impacts.

The first timeframe is the short-term timeframe, which analyzes 60 years of continued storage after the end of a reactor's licensed life for operation. The NRC considers the short-term timeframe to be the most likely scenario for continued storage; and the GEIS assumes that a repository would become available by the end of the short-term timeframe. The GEIS also analyzed two additional timeframes: long-term and indefinite. The long-term timeframe considers the environmental impacts of continued storage for 160 years after the end of a reactor's licensed life for operation. Finally, the GEIS includes an analysis of an indefinite timeframe, which assumes that a repository never becomes available.

By the end of the short-term timeframe, some spent fuel could be between 100 and 140 years old. Short-term storage of spent fuel includes the following:

- Continued storage of spent fuel in spent fuel pools (at-reactor only) and ISFSIs,
- Routine maintenance of spent fuel pools and ISFSIs (e.g., maintenance of concrete pads), and
- Handling and transfer of spent fuel from spent fuel pools to ISFSIs (all spent fuel is assumed to be removed from the spent fuel pool by the end of the short-term timeframe).

Long-term storage is continued storage of spent fuel for an additional 100 years after the short-term timeframe for a total of 160 years beyond the licensed life for operation of a reactor. The GEIS assumes that all spent fuel has been transferred from the spent fuel pool to an ISFSI by the end of the short-term period. The GEIS also assumes that a repository would become available by the end of the long-term timeframe. By the end of the long-term timeframe, some spent fuel could be between 200 and 240 years old. Long-term storage activities include the following:

- Continued storage of spent fuel in ISFSIs, including routine maintenance;
- One time replacement of ISFSIs and spent fuel canisters and casks; and
- Construction, operation, and one replacement of a dry transfer system (DTS).

The third timeframe analyzed by the GEIS is the indefinite timeframe, which assumes that a repository does not become available. The Commission does not believe that this scenario is likely to occur, but its inclusion in the analysis allows the NRC to fully analyze the environmental impacts associated with continued storage. The activities during the indefinite timeframe are the same as those that would occur for the long-term timeframe; however, without a repository the replacement activities would occur every 100 years.

B4. What Are the Key Assumptions Used in the GEIS?

To guide its analysis, the NRC relied upon certain assumptions regarding storage of spent fuel. A detailed discussion of these assumptions is contained in Section 1.8.3 of the GEIS. Key assumptions used in the GEIS include, but are not limited to the following:

- Institutional controls, including the continued regulation of spent fuel, will continue.
- Spent fuel canisters and casks would be replaced approximately once every 100 years.
- A DTS would be built at each ISFSI location for fuel repackaging and the ISFSIs and DTS facilities would be replaced approximately once every 100 years.
- All spent fuel would be removed from spent fuel pools to dry storage by the end of the short-term timeframe (60 years after licensed life).
- An ISFSI of sufficient size to hold all spent fuel generated during licensed life for operation will be constructed before the end of the reactor's licensed life for operation.
- In accordance with NEPA, the NRC's analysis in the GEIS is based on current technology and regulations.

B5. How Will Significant Changes in These Assumptions Be Addressed Under the NRC's Regulatory Framework?

fugitive dust emissions, terrestrial wildlife direct and indirect mortalities, terrestrial habitat loss, and temporary construction traffic impacts. The potential MODERATE impacts on aesthetics and waste management are based on noticeable changes to the viewshed from constructing a new away-from-reactor ISFSI, and the volume of nonhazardous solid waste generated by assumed ISFSI and DTS replacement activities for the indefinite timeframe. The potential LARGE (beneficial) impacts on socioeconomics are due to local economic tax revenue increases from an away-from-reactor ISFSI. The potential impacts to historic and cultural resources during the short-term storage timeframes would range from SMALL to LARGE. The magnitude of adverse effects on historic properties and impacts on historic and cultural resources largely depends on where facilities are sited, what resources are present, the extent of proposed land disturbance, whether the area has been previously surveyed to identify historic and cultural resources, and if the licensee has management plans and procedures that are protective of historic and cultural resources. Even a small amount of ground disturbance (e.g., clearing and grading) could affect a small but significant resource. In most instances, placement of storage facilities on the site can be adjusted to minimize or avoid impacts on any historic and cultural resources in the area. However, the NRC recognizes that this is not always possible. The NRC's site-specific environmental review and compliance with the National Historic Preservation Act (NHPA) process could identify historic properties, and adverse effects, and potentially resolve adverse effects on historic properties and impacts on other historic and cultural resources. Under the NHPA, mitigation does not eliminate a finding of adverse effect on historic properties. The potential impacts to historic and cultural resources during the long-term and indefinite storage timeframes would range from SMALL to LARGE. This range takes into consideration routine maintenance and monitoring (i.e., no ground-disturbing activities), the absence or avoidance of historic and cultural resources, and potential ground-disturbing activities that could affect historic and cultural resources. The analysis also considers uncertainties inherent in analyzing this resource area over long timeframes. These

construction permits, and early site permits are included in the scope of the generic determination in 51.23(a). Additionally, paragraph (b) is revised for readability by restructuring the paragraph and separating the requirements that apply to an applicant from those that apply to the NRC. This paragraph is also revised to provide additional clarity regarding how the generic determination in 10 CFR 51.23(a) will be implemented in future NRC NEPA reviews. These amendments to 10 CFR 51.23(b) are intended to clarify how the NRC has interpreted and implemented 10 CFR 51.23 and how it will do so in future licensing activities. The approach taken for an EA differs slightly from the approach for EISs because under the terms of the revised 10 CFR 51.23 an EA must consider the impact determinations from the GEIS, while for an EIS the impact determinations are deemed incorporated into the GEIS. Consistent with current practice, applicants will not be required to address continued storage in environmental reports submitted to support applications for issuance, renewal, or amendment of an operating license or construction permit for a nuclear power reactor under 10 CFR parts 50 and 54; issuance, renewal, or amendment of an early site permit or combined license for a nuclear power reactor under 10 CFR parts 52 and 54; or the issuance, renewal, or amendment of a license for storage of spent nuclear fuel at an ISFSI under 10 CFR part 72. The impact determinations are deemed incorporated into any EIS prepared to support issuance, renewal, or amendment of an operating license or construction permit for a nuclear power reactor under 10 CFR parts 50 and 54; issuance, renewal, or amendment of an early site permit or combined license for a nuclear power reactor under 10 CFR parts 52 and 54; or the issuance, renewal, or amendment of a license for storage of spent nuclear fuel at an ISFSI under 10 CFR part 72. The impact determinations will be considered in EAs, if the impact determinations of continued storage of spent fuel are relevant to the proposed action. The NRC is making conforming changes to 10 CFR 51.30(b), 51.50(a), 51.50(b), 51.50(c), 51.53(b), 51.53(c), 51.53(d), 51.61, 51.75(a), 51.75(b), 51.75(b~~c~~), 51.80(b), 51.95(b), 51.95(c), 51.95(d), and 51.97(a) to clarify that ISFSI license renewals, reactor construction permits, and early site permits are included in the

including the addition of early site permits and construction permits, as a natural outgrowth of the proposed rule. These changes clarify the Commission's approach to ensure consistent evaluation of the environmental impacts of continued storage in all proceedings where spent fuel impacts arising from reactor operation may be considered, including the NEPA reviews for early site permits and construction permits, and thereby fully implementing the NRC's objectives for this latest rule revision.

These changes to add early site permits and construction permits do not affect and are independent of the NRC's conclusions regarding the analysis in NUREG-2157, in 10 CFR 51.23(a), or the application of 10 CFR 51.23(b) to the licensing actions specified in the proposed rule. Accordingly, the Commission has determined that the balance of the rule for which prior notice was given can function sensibly and independently without these additional changes, and therefore intends that the balance of the rule be treated as severable to the extent possible. See *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13, 22 (D.C. Cir. 2001).

With respect to changes to improve the rule's readability, the revisions do not change the requirements for applicants and do not modify the substantive standards by which the NRC evaluates license applications. The changes made to address readability do not affect and are independent of the NRC's conclusions regarding the analysis in NUREG-2157 as applied in 10 CFR 51.23(a) or the application of 10 CFR 51.23(b) to the licensing actions specified in the proposed rule.

The 2010 version of 10 CFR 51.23(b) provided that no discussion of any environmental impact of spent fuel continued storage is required in any NRC EA or EIS prepared in connection with the issuance or amendment of an operating license for a nuclear power reactor under 10 CFR parts 50 and 54; or issuance or amendment of a combined license for nuclear power reactor under 10 CFR parts 52 and 54; or the issuance of an initial license or amendment for an ISFSI under 10 CFR part 72. In practice, the NRC does include a brief discussion of the generic determination of 10 CFR 51.23 in these EISs. See, e.g., NUREG-1947, *Final Supplemental*

B-1 entries that the NRC had intended to promulgate in its 2013 rulemaking, but was unable to because the 2010 Waste Confidence rule had been vacated.

~~The Commission has concluded in the GEIS that deep geologic disposal remains technically feasible, w~~While the bases for the specific conclusions in Table B-1 are found elsewhere (e.g., the 1996 rule that issued Table B-1 and the 1996 license renewal GEIS, which provided the technical basis for that rulemaking, as reaffirmed by the 2013 rulemaking and final ~~GEIS), the Commission has now concluded in the GEIS that deep geologic disposal remains technically feasible.~~ This rulemaking accordingly revises the entries for these two issues in Table B-1. The NRC provided notice of this revision in the *Federal Register* for the proposed rule (78 FR 56776; September 13, 2013) and received two comments on the table. See Sections D.2.3.6 and D.2.3.9 of Appendix D of the GEIS.

C. ~~Repository and Safety Conclusions~~ Conclusions Regarding Technical Feasibility

C1. *What Is the Basis of the NRC's Conclusion That a Geologic Repository Is Feasible?*

The technical feasibility of a repository is addressed in Section B.2.1 of the GEIS. Technical feasibility simply means whether a geologic repository is technically possible using existing technology (i.e., without any fundamental breakthroughs in science and technology). As discussed in Section B.2.1, the consensus within the scientific and technical community engaged in nuclear waste management is that safe geologic disposal is achievable with currently available technology. Currently, 25 countries, including the United States, are considering disposal of spent or reprocessed nuclear fuel in deep geologic repositories.

As noted in Section B.2.1 of the GEIS, ongoing research in both the United States and other countries supports a conclusion that geological disposal remains technically feasible and that acceptable sites can be identified. After decades of research into various geological media, no insurmountable technical or scientific problem has emerged to challenge the conclusion that safe disposal of spent fuel and high-level radioactive waste can be achieved in a mined geologic

out. International and domestic experience ~~have made it clearly~~ demonstrate that technical knowledge and experience alone are not sufficient to bring about the broad social and political acceptance needed to construct a repository. The time needed to develop a societal and political consensus for a repository could add to the time to site and license a repository or overlap it to some degree. Given this uncertainty, the GEIS evaluates a range of scenarios for the timeframe of the development of a repository, including indefinite storage. As discussed in Section B.2.2, the NRC believes that the United States will open a repository within the short-term time frame of sixty years, but, to account for all possibilities, has included a second, longer time frame as well as the scenario in which a repository never becomes available. ~~Theis~~ analysis ~~of the long-term and indefinite timeframes~~ does not constitute an endorsement of ~~an~~ extended ~~timeframe for~~ onsite storage of spent fuel as the appropriate long-term solution for disposition of spent fuel and high-level waste.

C3. Does the Rule Address the Feasibility and Timing of a Repository?

No. As discussed in Issue 1 (see Section IV, "Summary and Analysis of Public Comments on the Proposed Rule"), the NRC specifically sought public comment on this issue and decided not to address the feasibility and timing of a repository in the rule text itself, instead analyzing various time scenarios for repository availability in the GEIS, including the possibility that a repository will not be available. A discussion ~~of~~on the feasibility and timing of a repository can be found in Appendix B of the GEIS.

C4. What Is the Basis for the NRC's Conclusion Regarding Safe Storage of Spent Fuel in Spent Fuel Pools?

Section B.3.1 of the GEIS discusses the feasibility of safe storage of spent fuel in spent fuel pools and addresses a number of technical considerations. First, the integrity of spent fuel and cladding within the environment of a spent fuel pool's controlled water chemistry is

can update its service life assumptions as necessary and consider any circumstances that might require repackaging spent fuel earlier than anticipated.

C6. How Does the Regulatory Framework Factor Into the Continued Safe Storage of Spent Fuel?

A strong regulatory framework that involves regulatory oversight, continuous improvement based on research and operating experience, and licensee compliance with regulatory requirements is important to the continued safe storage of spent fuel until repository capacity is available. As part of its oversight, the NRC can issue orders and new or amended regulations to address emerging issues that could impact the safe storage of spent fuel, as well as issue generic communications such as generic letters and information notices. The regulatory framework is discussed in Section B.3.3 of the GEIS. The NRC's upgrades of safety, environmental, and security requirements following historic events such as the September 11, 2001 terrorist attacks, and the March 11, 2011 earthquake and subsequent tsunami that struck the Fukushima Dai-ichi nuclear power plant demonstrate the NRC's capability for prompt and vigorous response to new developments that warrant increased regulatory attention. Thus, the vitality and evolution of the NRC's regulatory requirements support a reasonable conclusion that continued storage, even over extended periods of time beyond those regarded as most likely, will continue to be safe with the same or less environmental impact. Section B.3.3.1 discusses the NRC's oversight related to routine operations, accidents, and terrorist activity in more detail. Section B.3.3.2 and Appendix E discuss the NRC's response to spent fuel pool leaks and Section B.3.3.3 discusses the regulatory framework related to dry cask storage.

The NRC continues to improve its understanding of long term dry storage issues and is separately examining the regulatory framework and potential technical issues related to extended storage and subsequent transportation of spent fuel for multiple ISFSI license renewal periods extending beyond 120 years. As part of this effort, the NRC is also closely following

for power reactors and ISFSIs. The changes do not modify the substantive standards by which the NRC will evaluate license applications and do not alter the generic determination in 10 CFR 51.23(a). Rather, the additional changes improve the readability of the regulations to make it easier to understand and provide consistency in how the generic finding in 10 CFR 51.23(a) will be used in NRC NEPA documents. NEPA is a procedural statute directed at Federal agencies, and 10 CFR 51.23 (including the additional clarifying amendments) addresses the manner by which NRC complies with NEPA with respect to the subject of continued storage. These amendments do not require action by any person or entity regulated by the NRC, nor do these amendments change the substantive responsibilities of any person or entity regulated by the NRC. That the additional amendments do not impose any substantive responsibilities or require or prohibit action by any persons or entities regulated by the NRC is indicative of the character of the amendments as matters of NRC procedure and practice.

IV. Summary and Analysis of Public Comments on the Proposed Rule

The proposed rule was published on September 13, 2013 (78 FR 56776), for a 75-day public comment period that would have ended on November 27, 2013. The draft GEIS was also noticed for public comment on the same day. Due to the lapse in appropriations and the subsequent shutdown of the NRC, the NRC published a *Federal Register* notice on November 7, ~~2014~~2013 (78 FR 66858), that extended the public comment period until December 20, ~~2014~~2013. The NRC also held 13 public meetings during the comment period to obtain public comment on the proposed rule and draft GEIS. The NRC received 33,099 comment submissions from organizations and individuals. Of those comments, 924 represented unique comment submissions and the remainder were considered form comments sponsored by various organizations. In addition, a number of individuals provided oral comments at the public

Issue 1

In the proposed rule, the NRC invited comment on whether the timeline for repository availability should be included in the rule text. Commenters were requested to comment on whether specific policy statements regarding the timeline for repository availability should be removed from the proposed rule text. A total of 13 commenters responded.

Commenters who responded to Issue 1 generally expressed support for removing a statement regarding the repository availability timeline from the rule text. Reasons for this support varied, but commonly included a lack of NRC control over repository timelines; previous failures to predict when a repository would become available; the inadequacy of a basis for any particular timeline; that a timeline is not required under NEPA; and the concern that including a statement about repository availability ties the United States to repository disposal of spent fuel to the exclusion of reprocessing or other options.

The few commenters who expressed support for retaining a statement regarding the timeline for repository availability indicated that the timeline is an important element of the agreement "contract" the public has with the nuclear industry; that the availability of a repository is the most critical issue affecting long-term dry cask storage; that inclusion of a statement regarding repository availability in the rule text indicates the importance the Commission places on this key assumption of the GEIS; and that these findings are useful in framing the NRC's assessment of the safety and environmental impacts of continued storage.

After considering the comments, the NRC has decided not to retain the timeline in the rule text. With the development of the GEIS, the relationship between repository availability and the consideration of environmental impacts from continued storage has changed from previous proceedings. In previous proceedings, the date of future repository availability was the end point of the temporal scope of the NRC's analysis of the environmental impacts from continued storage. In this rulemaking, there is no end point to the temporal scope of the NRC's analysis of

the environmental impacts of continued storage. Further, the NRC agrees that there is no legal requirement to include a timeline in the rule text. Although future repository availability remains an important consideration because it provides an eventual disposition path for spent fuel, there no longer is a need to provide a time limit for the environmental impacts analysis. To support the analysis in the GEIS, the NRC has determined that a repository is technically feasible and that it is technically feasible to safely store the spent fuel. The removal of a timeframe from the rule language does not mean that the Commission is endorsing indefinite storage of spent fuel. The United States national policy remains disposal of spent fuel in a geologic repository, and, as stated in the GEIS, the NRC believes that the most likely scenario is that a repository will become available by the end of the short-term timeframe (60 years beyond the licensed life for operation of a reactor.)

Further, the GEIS recognizes the uncertainty inherent in predicting when a repository will become available. It therefore contains an analysis of two additional timeframes: a long-term timeframe that contemplates an additional 100 years of storage and an indefinite timeframe that looks at the environmental impacts that could occur if a repository never becomes available. Appendix B of the GEIS and Section II.C of this notice contain a discussion of repository feasibility.

Issue 2

In the proposed rule, the NRC invited comment on the issue of including statements regarding the safety of continued spent fuel storage in the rule text. Commenters were requested to comment on whether specific policy statements regarding the safety of continued spent fuel storage should be made in the rule text given the expansive and detailed information in the GEIS. A total of 13 commenters provided responses to the specific question on this subject.

Commenters who responded to Issue 2 generally expressed support for making a policy statement regarding safety of continued storage in the rule text. However, their reasons varied widely. Some commenters indicated that including a statement about safety enhanced openness and transparency, or supported the language because storage is, in fact, safe. Other commenters indicated that it should be included because safety determinations are more important to NRC decisions and to members of the public than environmental issues in spent fuel matters; because the public should have the benefit of the NRC's determination that spent fuel may be stored for extended periods with reasonable assurance of safety; because a safety statement would facilitate opposition to nuclear power; because it is consistent with the long-standing approach to addressing continued storage; and because it addresses legal precedents.

Commenters who opposed a policy statement regarding safety of continued storage in the rule text asserted that a statement is unnecessary to the rule; that it is not possible to project the future safety of spent fuel storage; that statements related to safety of spent fuel storage are entirely unrelated and unnecessary to the intended purpose of the rule; and that there are too many unknowns and open issues related to storage that must be resolved before any statement regarding safety can be made.

After considering the comments, the NRC has decided not to make a policy statement about safe storage in the rule text. The generic conclusion that spent fuel can be stored safely beyond the operating life of a power reactor has been a component of all past Waste Confidence proceedings. However, this continued storage rulemaking proceeding is markedly different from past proceedings. Unlike earlier proceedings, the NRC has prepared a GEIS that analyzes the impacts of continued storage of spent fuel. The GEIS fulfills the NRC's NEPA obligations and provides a regulatory basis for the rule rather than addressing the agency's responsibilities to protect public health and safety under the Atomic Energy Act (AEA), of 1954 as amended. Further, Appendix B of the GEIS discusses the technical feasibility of continued

safe storage. It is important to note that, in adopting revised 10 CFR 51.23 and publishing the GEIS, the NRC is not making a safety determination under the AEA to allow for the continued storage of spent fuel. ~~Safety-AEA~~ determinations associated with licensing of these activities are contained in the appropriate regulatory provision addressing licensing requirements and in the specific licenses for facilities. Further, there is not any legal requirement for the NRC to codify a generic safety conclusion in the rule text. By not including a safety policy statement in the rule text, the NRC does not ~~mean to~~ imply that spent fuel cannot be stored safely. ~~Rather, the conclusion that~~ To the contrary, the analysis documented in the GEIS is predicated on the ability to store spent fuel safely can be stored safely for ever the short-term, long-term, and indefinite timeframes ~~supports the analysis in the GEIS and is.~~ This understanding is based upon the technical feasibility analysis in Appendix B of the GEIS and the NRC's decades-long experience with spent fuel storage and development of regulatory requirements for licensing of storage facilities that are focused on safe operation of such facilities, which have provided substantial technical knowledge about storage of spent fuel. Further, spent fuel is currently being stored safely at reactor and storage sites across the country, which supports the NRC's ~~belief conclusion that it is feasible for that~~ spent fuel ~~can continue~~ to be stored safely for the timeframes considered in the GEIS. Appendix B of the GEIS and Section II.C of this notice contain a discussion of the technical feasibility and regulatory framework that supports continued safe storage.

Issue 3

In the proposed rule, the NRC invited comment on the issue of streamlining the Statements of Consideration. Commenters were specifically requested to comment on whether the Discussion portion of the Statements of Consideration should be streamlined by removing content that is repeated from the draft GEIS to improve clarity of the discussion. A total of 13 commenters provided responses to the specific question on this subject.

were requested to comment on whether the title of the rule should be changed in light of a GEIS being issued instead of a separate Waste Confidence Decision. A total of 13 commenters provided responses to the specific question on this subject.

Commenters who responded to Issue 4 expressed near-unanimous support for changing the title of the rule. Reasons for support, however, varied widely. Commenters indicated an array of reasons to support changing the rule name, including that the name is an anachronism; that the title is misleading and provides no useful description of the revised rule's purpose or intent; that the title shows a lack of transparency; that historical findings of confidence have proven erroneous; that confidence does not exist; that the U.S. Court of Appeals for the District of Columbia Circuit invalidated confidence as a basis for the rule; that the title should be changed to reflect the evolving rulemaking process (no separate Waste Confidence Decision and reliance on the GEIS); and that confidence requires transfer of all fuel to dry casks and a defined and available end point. Many other commenters—who did not expressly respond to this issue—expressed views that “waste confidence” is a confusing term or that it conveys a confidence that does not exist. Commenters noted that with a clearer title, the purpose and limited application of the rule would be more evident to members of the public who are not aware of the historical basis for the term “waste confidence.” Commenters suggested that the title should more accurately reflect the true Federal action of licensing and relicensing of reactors and ISFSIs and should accurately reflect the purpose of the analysis, evaluation, and conclusions of the study. Suggestions for a new title included “Storage of SNF [Spent Nuclear Fuel] after Licensed Term of Operations” and “Storage of Spent Nuclear Fuel for the Period After License Term of Reactor Operation.”

Only one commenter who responded to this issue expressed opposition to revising the title. The commenter was opposed to changing the title because waste confidence is what the rulemaking has historically been about and the rule should still be about confidence that a repository will be available.

§ 51.53 Postconstruction environmental reports.

Section 51.53 is revised to improve readability and to clarify that postconstruction environmental reports do not need to discuss the impacts of continued storage.

§ 51.61 Environmental report—~~independent spent fuel storage installation (ISFSI)~~ or monitored retrievable storage installation (MRS) license.

Section 51.61 is revised to clarify that ISFSI renewals are included in the scope of the generic determination in § 51.23, to improve readability, and to clarify that the ISFSI environmental report does not need to discuss the impacts of continued storage.

§ 51.75 Draft environmental impact statement—construction permit, early site permit, or combined license.

Section 51.75 is revised to clarify that construction permits and early site permits are included in the scope of the generic determination in § 51.23 and that the impact determinations on continued storage that are in NUREG-2157 are deemed to be incorporated into the draft EIS.

Although footnote 5 is ~~laid-out~~included in the regulatory text, it is not being amended but is included to meet an Office of the Federal Register publication requirement.

§ 51.80 Draft environmental impact statement—materials license.

Paragraph (b) is revised to clarify that ISFSI renewals are included in the scope of the generic determination in § 51.23 and to improve readability. Paragraph (b) is further revised to clarify that the impact determinations on continued storage that are in NUREG-2157 are deemed to be incorporated into the EIS.

during the license renewal term and during the continued storage period. Additionally, footnote 7 of Table B-1 is removed. Although footnotes 1, 2, and 3 are ~~laid-out~~included in the regulatory text, they are not being amended but are included to meet an Office of the Federal Register publication requirement.

VI. Availability of Documents

The documents identified in the following table are available to interested persons either through ADAMS or the Web address provided, as indicated.

Document	PDR	Web (www.regulations.gov unless otherwise indicated)	ADAMS
NRC Documents			
<i>Federal Register</i> notice – Extension of Comment Period (78 FR 66858; November 7, 2014 <u>2013</u>)	X	X	ML13294A398
<i>Federal Register</i> notice – Waste Confidence – Continued Storage of Spent Nuclear Fuel; Proposed Rule (78 FR 56776; September 13, 2013)	X	X	ML13256A004
NUREG-2157, "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel" Vol. 1	X	X	ML to be added prior to publication
NUREG-2157, "Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel" Vol. 2	X	X	ML to be added prior to publication
"Comments on the Waste Confidence Draft Generic Environmental Impact Statement and Proposed Rule"	X	X	ML14154A175
Draft NUREG-2157, "Waste Confidence Generic Environmental Impact Statement"	X	X	ML13224A106
<i>Federal Register</i> notice announcing the 1977 Denial of PRM-50-18 (42 FR	X		ML13294A161

<i>Luminant Generation Co. LLC</i> (Comanche Peak Nuclear Power Plant, Units 3 and 4), et al., CLI-12-7, 75 NRC 379, 391-92 (March 16, 2012)	X		ML12076A190
NUREG 1947, "Final Supplemental Environmental Impact Statement for Combined License (COLs) for Vogtle Electric Generating Plant Unit 3 and 4"	X		ML11076A010
NUREG-1714, Volume 1, "Final Environmental Impact Statement for the Construction and Operation of an Independent Spent Fuel Storage Installation on the Reservation of the Skull Valley Band of Goshute Indians and the Related Transportation Facility in Tooele County, Utah"	X		ML020150170
<i>Exelon Generation Co., LLC</i> (Early Site Permit for Clinton ESP Site), LBP-04-17, 60 NRC 229, 246-47 (August 6, 2004)	X		ML042260071
<i>Dominion Nuclear North Anna, LLC</i> (Early Site Permit for North Anna ESP Site), LBP-04-18, 60 NRC 253, 268-69 (August 6, 2004).	X		ML042260064
Non-NRC Documents			
<i>NRDC v. NRC</i> , 582 F.2d 166 (2d Cir. 1978)		http://scholar.google.com/scholar_case?case=1292280692394324643 Note: This link directs the reader to an unofficial copy of this case.	
<i>Minnesota v. NRC</i> , 602 F.2d 412 (D.C. Cir. 1979)		http://scholar.google.com/scholar_case?case=15544749217851899941 Note: this link directs the reader to an unofficial copy of this case.	
<i>Marsh v. Oregon Natural Resources Council</i> , 490 U.S. 360, 374 (1989)		http://scholar.google.com/scholar_case?case=10887052189863115558&q	

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		Note: This link directs the reader to an unofficial copy of this case.	
<i>MD/DC/DE Broadcasters Ass'n v. FCC</i> , 236 F.3d 13, 22 (D.C. Cir. 2001)		http://scholar.google.com/scholar_case?case=4929117322249877509&q=MD/DC/DE+Broadcasters+Ass%27n+v.+FCC&hl=en&as_sdt=20000006 Note this link directs the reader to an official copy of the case.	
<i>Village of Bensenville v. Federal Aviation Administration</i> , 457 F.3d 52, 71-72 (D.C. Cir. 2006)		http://scholar.google.com/scholar_case?case=6559910666849441800&q=Village+of+Benenville&hl=en&as_sdt=20000003 Note this link directs the reader to an unofficial copy of the case.	
<i>(New York v. NRC</i> , 681 F.3d 471 (D.C. Cir. 2012)			ML12191A407
DOE, Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste	X		ML13011A138

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VII. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs," approved by the Commission on June 20, 1997, and published in the Federal register (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or the provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State

with respect to continued storage and thereby provide a regulatory basis for this revision to 10 CFR 51.23. Section 51.23(a) adopts into regulation the generic environmental impact determinations of NUREG-2157, and section 51.23(b) provides that the environmental impacts disclosed in NUREG-2157 will be deemed incorporated into future EISs and considered in future EAs, if the impacts of continued storage are relevant to the proposed action, to be considered by the decision-makers in those proceedings.

The NRC's considerations in reaching this decision to adopt a rule are discussed in more detail in [the following sections of](#) NUREG-2157: the proposed action in Section 1.4, the purpose of and need for the proposed action in Section 1.5, the no-action alternative and options in Section 1.6, the alternatives considered and eliminated in Section 1.6.2, and the costs and benefits of the proposed action and options under the no action alternative in Chapter 7⁷ with supporting information in Appendix H. These portions of the GEIS inform the public and decision-makers of the environmental implications of this action.

The NRC's rulemaking action provides efficient processes for use in NRC licensing proceedings and reviews to address the environmental impacts of continued storage, ~~in~~ [lineconsistent](#) with the historic efficiencies provided by prior rules codified at 10 CFR 51.23. In COMSECY-12-0016, the NRC considered a number of alternative options and tracks to provide processes to address these environmental impacts in licensing and to preserve the efficiencies historically provided by 10 CFR 51.23. As documented in the SRM for COMSECY-12-0016, the Commission chose to pursue this combination of a rulemaking to revise 10 CFR 51.23 and a generic environmental impact statement to provide a regulatory basis for that rulemaking. As discussed in Section 1.6 of NUREG-2157, none of the options under the no-action alternative considered in the generic environmental impact statement could achieve the NRC's purpose of

⁷ The inclusion of a cost-benefit analysis for the proposed action in Chapter 7 is consistent with NRC guidance for preparation of an environmental impact statement. The costs of continued storage activities and facilities are disclosed in Chapter 2, while the benefit that accrues from the specific action resulting in the need to store spent fuel (i.e., production of electrical power) will be discussed in the environmental assessment or impact statement prepared in connection with the request for authorization of that action, which will incorporate the impact determinations of NUREG-2157.