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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 30, 40, 50, 70, and 72

RIN 3150-AI55

[NRC-2011-0286]

Decommissioning Planning During Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new regulatory guide (RG) 4.22, "Decommissioning Planning During Operations." The guide describes a method that the NRC staff considers acceptable for use by holders of licenses in complying with the NRC's Decommissioning Planning Rule (DPR) (76 FR 35512; June 17, 2011). The DPR went into effect on December 17, 2012, and is intended to minimize the likelihood of new "legacy sites," which are NRC-licensed facilities with insufficient resources to complete decommissioning activities and termination of a license at the end of operations.

ADDRESSES: Please refer to Docket ID NRC-2011-0286 when contacting the NRC about the availability of information regarding this document. You may submit access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0286. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: Carol.Gallagher@nrc.gov.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC

Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The regulatory guide is available electronically under ADAMS Accession Number ML12158A361. The regulatory analysis may be found in ADAMS under Accession No. ML12158A375.

- *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. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Edward O'Donnell, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-251-7455, email: Edward.O'Donnell@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a new guide in the NRC's Regulatory Guide series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

II. Further Information

RG 4.22 describes a method that the NRC staff considers acceptable for use by holders of licenses in complying with the DPR. On December 13, 2011 (76 FR 77431), the NRC issued Draft Regulatory Guide, DG-4014, "Decommissioning Planning During Operations," in the **Federal Register** with a public comment period ending on February 10, 2012. Subsequently, the public comment period was extended from February 10, 2012 to March 30, 2012 (77 FR 8751; February 15, 2012) to allow more time for comment. In addition, the NRC staff conducted a workshop at NRC headquarters and a concurrent webinar on July 12, 2012, and the comments received at the

workshop were considered in the revision of DG-4014. The written and oral public comments suggested areas that needed clarification, and the NRC revised the draft guide to address these areas. The public comments and NRC staff response to them may be found in ADAMS under Accession No. ML12278A021.

III. Backfitting and Issue Finality

The statement of considerations for the DPR discussed that rule's compliance with applicable backfitting provisions (76 FR 35511, at 35562-63). This regulatory guide presents the NRC staff's first guidance addressing compliance with § 20.1501(a) and (b) of Title 10 of the *Code of Federal Regulations* (10 CFR) and the newly-added paragraph (c) of 10 CFR 20.1406. The first issuance of guidance on a newly-changed or newly-added rule provision does not constitute backfitting or raise issue finality concerns, inasmuch as the guidance must be consistent with the regulatory requirements in the newly-changed or newly-added rule provisions and the backfitting and issue finality considerations applicable to the newly-changed or newly-added rule provisions must logically apply to this guidance. Therefore, issuance of guidance addressing the newly-changed and newly-added provisions of the amended rule does not constitute issuance of "changed" or "new" guidance within the meaning of the definition of "backfitting" in 10 CFR 50.109(a)(1). Similarly, the issuance of the guidance addressing the newly-changed or newly-added provisions of the amended rule, by itself, does not constitute an action inconsistent with any of the issue finality provisions in 10 CFR part 52. Accordingly, no further consideration of backfitting or issue finality is needed as part of the issuance of this guidance addressing compliance with the newly-changed provisions of § 20.1501 and newly-added paragraph (c) of § 20.1406.

Dated at Rockville, Maryland, this 27th day of December, 2012.

For the Nuclear Regulatory Commission.

Jazel D. Parks,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

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