

Part of this proposed action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement. This environmental assessment was prepared for the part of the proposed action not involving safeguards plans.

#### *Need for Proposed Action*

The NRC revised 10 CFR 73.55 through the issuance of a final rule on March 27, 2009 (74 FR 13926). The revised regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that many Part 50 licensees with facilities in decommissioning status did not recognize the applicability of this regulation to their facility. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 were applicable to all Part 50 licensees. By letter dated August 2, 2010, the NRC informed Exelon Nuclear, the ZNPS license holder at that time, of the applicability of the revised rule and stated that it would have to evaluate the applicability of the regulation to its facility and either make appropriate changes or request an exemption.

Section 73.55 requires that licensees establish and maintain physical protection and security for activities involving SNM within the 10 CFR part 50 licensed area of a facility. The proposed action is needed because the permanently shut-down and defueled status of the facility changes the security that is necessary to protect against radiological sabotage or diversion. The proposed action will allow the licensee to conserve resources for decommissioning activities.

#### *Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes

that exempting the facility from certain physical protection security requirements will not have any adverse environmental impacts.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

#### *Environmental Impacts of the Alternatives to the Proposed Action*

The alternative is the no-action alternative, under which the staff would deny the exemption request. This denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are similar, therefore the no-action alternative is not further considered.

#### *Conclusion*

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

#### *Agencies and Persons Consulted*

In accordance with its stated policy, on July 21, 2011, the staff consulted with the Illinois State official of the Division of Nuclear Safety, Illinois Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required

under Section 106 of the National Historic Preservation Act.

### **III. Finding of No Significant Impact**

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

### **IV. Further Information**

For further details with respect to the proposed action, see the licensee's letter dated December 2, 2010, [ADAMS Accession Number ML103400569]. Documents related to this action, including the application and supporting documentation, are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 12th day of October, 2011.

For the U.S. Nuclear Regulatory Commission.

#### **Keith I. McConnell,**

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-238; NRC-2011-0222]**

### **N.S. Savannah; Exemption From Certain Security Requirements**

#### **1.0 Background**

The U.S. Department of Transportation, Maritime

Administration (MARAD) is the licensee and holder of Facility Operating License No. NS-1 issued for the N.S. Savannah (NSS) currently located in the Port of Baltimore, Maryland. The NSS was the world's first nuclear powered merchant ship. The NSS was operated in experimental and commercial demonstration service throughout the 1960s.

The ship was removed from service in 1970. In August 1971, the reactor was defueled. The fuel was stored in a "spent fuel pool" inside MARAD's Refueling Facility, located at the Todd Shipyard in Galveston, Texas. The refueling facility was licensed by the state of Texas under an agreement with the Atomic Energy Commission (AEC). On November 3, 1972, all 36 Core I spent fuel elements were returned to the AEC and transferred by the AEC for reprocessing at its Savannah River Site in South Carolina.

On May 19, 1976, the operating license for the NSS was amended to a possession-only license.

## 2.0 Action

Section 50.54(p)(1) of Title 10 of the Code of Federal Regulations (10 CFR) states, in part, "The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of Part 73 of this chapter for affecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan."

Part 73 of 10 CFR, "Physical Protection of Plant and Materials," provides in part in section 73.1(a), "This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used." In Section 73.55, entitled "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (b)(1) states, "The licensee shall establish and maintain a physical protection program, to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

The U.S. Nuclear Regulatory Commission (NRC or the Commission) revised 10 CFR 73.55, in part to include the preceding language, through the issuance of a final rule on March 27, 2009 (74 FR 13970). The revised

regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that some Part 50 licensees with facilities in decommissioning status did not recognize the applicability of this regulation to their facility. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 were applicable to all Part 50 licensees. By letter dated August 2, 2010, the NRC informed MARAD of the applicability of the revised rule and stated that it would have to evaluate the applicability of the regulation to its facility and either make appropriate changes or request an exemption.

By letter dated November 8, 2010, MARAD responded to the NRC's letter and requested exemptions from the security requirements in 10 CFR part 73 and 10 CFR 50.54(p).

## 3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present when, for example, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or when compliance would result in costs significantly in excess of those incurred by others similarly situated. Also, pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the regulations in Part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The purpose of the security requirements of 10 CFR part 73, as applicable to a 10 CFR part 50 licensed facility, is to prescribe requirements for a facility that possesses and utilizes SNM. By the end of 1972, all spent fuel at the NSS had been returned to the AEC for reprocessing. Since the license defines the facility as the reactor and associated components located aboard the ship, the removal of the spent Core I fuel from the ship is equivalent to removing all SNM from the NRC licensed site other than that contained in plant systems as residual contamination.

The remaining radioactive material of concern (*i.e.*, reactor vessel, piping systems, and ship structures) for the NSS is in a form that does not pose a risk of removal (*i.e.*, an intact reactor pressure vessel) and is well dispersed and is not easily aggregated into significant quantities. With the removal of the fuel containing SNM, the potential for radiological sabotage or diversion of SNM at the 10 CFR part 50 licensed site was eliminated. Therefore, the continued application of the fixed site physical protection requirements of 10 CFR part 73 to the NSS would no longer be necessary to achieve the underlying purpose of the rule. Additionally, as has been noted at other decommissioning nuclear power facilities, with the removal of the spent nuclear fuel from the site, the 10 CFR part 50 licensed site would be comparable to a source and byproduct licensee that uses general industrial security (*i.e.* locks and barriers) to protect the public health and safety. The continued application of fixed site physical protection requirements of 10 CFR part 73 would cause the licensee to expend significantly more funds for security requirements than other source and byproduct facilities that use general industrial security. Therefore, compliance with the fixed site physical protection requirements of 10 CFR Part 73 would result in costs significantly in excess of those incurred by others similarly situated. Based on the above, the NRC has determined that the removal of the fuel containing SNM at the 10 CFR part 50 licensed site constitutes special circumstances. The possession and responsibility for the security of the SNM was transferred to the AEC and is no longer the responsibility of the licensee. Therefore, protection of the SNM is no longer a requirement of the licensee's 10 CFR part 50 license. With no SNM to protect, there is no need for the physical protection requirements of 10 CFR part 73, which includes a safeguards contingency plan or procedures, physical security plan, guard training and qualification plan, and cyber security plan for the NSS, 10 CFR part 50 licensed site. The requirements for protection of safeguards information, physical protection of SNM in transit, and records and reports remain applicable.

## 4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense

and security based on the continued maintenance of appropriate security requirements for the remaining SNM contained in plant systems as residual contamination. Additionally, special circumstances are present based on the removal of the spent nuclear fuel from the 10 CFR part 50 licensed site. Therefore, the Commission hereby grants MARAD an exemption from the requirements of 10 CFR 50.54(p) for the NSS.

The Commission has also determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on the security requirements for the spent fuel containing SNM no longer being the responsibility of the licensee. Therefore, the Commission hereby grants MARAD an exemption from the fixed site physical protection requirements of 10 CFR Part 73 for the NSS. The fixed site physical protection requirements of 10 CFR Part 73 are delineated in §§ 73.20, 73.40, 73.45, 73.46, 73.50, 73.51, 73.54, 73.55, 73.56, 73.57, 73.58, 73.59, 73.60, 73.61, 73.67, Appendix B and Appendix C. The requirements for protection of safeguards information, physical protection of SNM in transit, and records and reports, contained in these or other sections of Part 73 continue to apply. To the extent that the licensee's request for an exemption from 10 CFR part 73 included requirements other than the fixed site physical protection requirements, that request is denied.

Part of this licensing action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to the part of this exemption not dealing with safeguards plans (*i.e.*; transportation of SNM, interaction with

emergency planning, and background checks) was published in the **Federal Register** on September 23, 2011 (76 FR 59174). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

These exemptions are effective immediately.

Dated at Rockville, Maryland, this 7th day of October 2011.

For the U.S. Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

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## **NUCLEAR REGULATORY COMMISSION**

**[NRC-2009-0323]**

### **Standard Format and Content of License Applications for Mixed Oxide Fuel Fabrication Facilities**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a revision to regulatory guide (RG) 3.39, "Standard Format and Content of License Applications for Mixed Oxide Fuel Fabrication Facilities." This guide endorses the standard format and content for license applications and integrated safety analysis (ISA) summaries described in the current version of NUREG-1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," as a method that the NRC staff finds acceptable for meeting the regulatory requirements of Title 10 of the Code of Federal Regulations (10 CFR) part 70, "Domestic Licensing of Special Nuclear Material" for mixed oxide fuel fabrication facilities.

**ADDRESSES:** You can access publicly available documents related to this regulatory guide using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The regulatory guide is available electronically under ADAMS Accession Number ML100280809. The regulatory analysis may be found in ADAMS under Accession Number ML111780401.

- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this regulatory guide can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2009-0323.

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#### **FOR FURTHER INFORMATION CONTACT:**

Sabrina Attack, Mixed Oxide and Uranium Deconversion Branch, Special Projects and Technical Support Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-492-3204; or e-mail: [Sabrina.Attack@nrc.gov](mailto:Sabrina.Attack@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

The NRC is issuing a revision to an existing guide in the agency'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.

Revision 1 of Regulatory Guide 3.39 was issued with a temporary identification as Draft Regulatory Guide, DG-3038. This guide endorses the standard format and content for license applications and integrated safety analysis (ISA) summaries described in the current version of NUREG-1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility," as a