

Scope and Anticipated Activities Related to Rulemaking

Scope of a Proposed Rulemaking and the Development Process

Should the Commission approve Option 3 to restart the rulemaking, the staff expects that the effort would leverage the draft proposed rule that the staff had prepared in 2010. The staff would also consider the comments received in response to a *Federal Register* (FR) notice (84 FR 574) published by the U.S Nuclear Regulatory Commission (NRC) on January 31, 2019, that requested views from interested stakeholders on the need for a *in situ* recovery (ISR) specific rulemaking. As was the case in 2010, this rulemaking would be limited in scope and would amend the current regulations in Appendix A to Part 40 of Title 10 of the *Code of Federal Regulations* (10 CFR) by codifying proven ISR license conditions, certain practices or recommendations set forth in NRC staff guidance, and “lessons learned” based upon the experience of both the NRC and Agreement State regulators. The focus of the rulemaking would be to provide a regulatory framework specific to ISR activities. The rulemaking would also update the maximum values for groundwater protection for all uranium mills (both conventional mills and ISRs) to be consistent with the U.S. Environmental Protection Agency’s (EPA) Maximum Contaminant Levels for drinking water in order to limit the need for future rule changes should EPA change those limits.

The staff would ensure that the rule language is performance-based and risk-informed. Specifically, the rulemaking could benefit new licensees by potentially address requirements for:

- site characterization and suitability;
- pre-operational, operational, and post-operational monitoring;
- reporting requirements;
- post-operational groundwater quality restoration;
- corrective actions;
- well design and construction;
- mechanical integrity; and
- plugging and abandonment of wells.

The new requirements, as currently envisioned, would not apply to a current licensee until they submitted a license amendment or license renewal request. In general, it is expected that the rule would result in only limited changes to ongoing or new operations at existing ISR facilities. The NRC staff expects that codifying many of the requirements and standards that are currently addressed in guidance and implemented through site-specific license conditions, will provide increased clarity and enforceability, result in more consistent and complete information provided across applications, and achieve greater transparency and efficiency in reviewing such applications. Although the greatest cost impact to existing licensees would likely be from increased post-restoration monitoring requirements, any new restoration requirements would not be applied to wellfields already restored or in the process of undergoing restoration.

The rulemaking would benefit both new and existing licensees by clarifying how certain requirements currently provided for in Appendix A to 10 CFR Part 40 would be applied to restored ISR wellfields, including the establishment of alternate concentration levels. The rulemaking would also increase regulatory stability and efficiency by providing a clear regulatory framework for ISR activities, which should make reviews of both future ISR applications and renewals more efficient. In addition, an ISR-specific rulemaking would streamline the hearing

and licensing process for those items now covered principally by license conditions, as the substance of the regulation cannot be challenged in individual licensing proceedings under 10 CFR 2.335(a). The rulemaking would also allow NRC to withdraw Regulatory Information Summary 2009-05, which was intended to provide clarifications of groundwater restoration standards for ISR facilities while the NRC completed rulemaking – the industry has in the past challenged the continued reliance of the staff on this document as circumventing rulemaking.

Supporting Analysis and Document Updates

If the Commission approves rulemaking, staff would use the 2010 draft proposed rule package as a starting point and update it in certain aspects. The staff estimates it would take 1 year to develop a proposed rule for Commission review. This estimate takes several factors into consideration:

- A new rulemaking working group would be established that would include Agreement State representatives.
- Rule language and concepts developed prior to the rulemaking's 2010 deferment are expected to remain relevant and likely would not need to be significantly reworked, resulting in an expedited rulemaking. Similarly, due to previous work, the regulatory basis does not need to be updated.
- Efficiencies to the current ISR licensing process would be identified and included in the rule language and in any updated guidance, as appropriate.

Because the expectations for a rulemaking regulatory analysis have been enhanced over the last decade, the NRC staff would need to revise the 2010 draft regulatory analysis. Similarly, a new supporting statement for the Paperwork Reduction Act would need to be developed.

The NRC staff does not plan on updating the deferred rule's regulatory basis as most issues have been identified through the significant and extensive work completed prior to the rule's 2010 deferment. The NRC staff does not expect there would be any substantial issues related to the cumulative effects of rulemaking (CER) because of the limited number of licensees and the lack of recent regulatory changes applicable to the uranium milling industry; the NRC staff, however, would seek comment on the CER during the rulemaking process.

If the Commission approves rulemaking, the staff would also update the guidance in NUREG-1569, "Standard Review Plan for In Situ Leach Uranium Extraction License Applications." During development of the guidance, the staff would evaluate the current licensing process to identify and implement any efficiencies that can be gained, and implement such efficiencies into the updated guidance. Such efficiencies would most likely include revisions to internal NRC processes, such as the development of acceptable standard review designs or programs, more frequent interactions with licensees, and the development of review templates. The staff does not foresee the need to revise or originate other guidance at this time. The draft and final guidance would be publicly available concurrently with publication of the proposed and final rules, respectively.