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[7590-01-P]

## NUCLEAR REGULATORY COMMISSION

[NRC-2014-0253]

### Fitness-for-Duty Programs for New Nuclear Power Plant Construction Sites

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG-5036, "Fitness-for-Duty [FFD] Programs at New Reactor Construction Sites." This DG provides new guidance for implementing fitness for duty requirements at nuclear power plant construction sites.

**DATES:** Submit comments by **[INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0253. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual(s) listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: 3WFN 06A-A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Wesley W. Held, Office of Nuclear Security and Incident Response, telephone: 301-415-1583, e-mail: [wesley.held@nrc.gov](mailto:wesley.held@nrc.gov), or Richard A. Jervey, Office of Nuclear Regulatory Research, telephone: 301-251-7404, e-mail: [richard.jervey@nrc.gov](mailto:richard.jervey@nrc.gov). U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments.**

A. Obtaining Information.

Please refer to Docket ID NRC-2014-0253 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available

information related to this document, by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0253. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual(s) listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain 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 e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The draft regulatory guide is available electronically in ADAMS under Accession No. ML14205A141.

- **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.

#### B. Submitting Comments.

Please include Docket ID NRC-2014-0253 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or

contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## **II. Additional Information.**

The NRC is issuing for public comment a DG in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC'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.

The DG, entitled, "Fitness-for-Duty Programs at New Reactor Construction Sites," is temporarily identified by its task number, DG-5036. This guidance is provided to ensure the effective and consistent implementation of the requirements in subpart K, "FFD Programs for Construction," of part 26, "Fitness-for-Duty Programs," in Title 10 of the *Code of Federal Regulations* (10 CFR). Part 26 requires certain individuals involved in the construction of nuclear power plants to be fit-for-duty. The requirements in part 26 are prescriptive in a number of areas, such as drug and alcohol testing; however, in other areas, such as those associated with subpart K, "FFD Program for Construction," the regulations contain less prescriptive, performance-based requirements. The performance-based regulations in subpart K enable licensees, applicants, and other entities to develop, implement, and/or maintain site-specific (or

fleet-wide) FFD programs in a manner that best suits their needs while still meeting regulatory requirements. However, this flexibility, without regulatory guidance, can challenge consistent and effective rule implementation. For example, a licensee can implement sanctions for FFD policy violations that are markedly more or less severe than sanctions for an equivalent violation at another licensee's construction site. This DG endorses the methodologies described in industry guidance document Nuclear Energy Institute (NEI) 06-06, "Fitness for Duty Program Guidance for New Nuclear Power Plant Construction Sites," revision 6, dated April 2013 (ADAMS Accession No. ML13093A340).

### **III. Backfitting and Issue Finality.**

This DG, if finalized, would provide guidance on the methods acceptable to the NRC staff for complying with the NRC's regulations associated with FFD programs of licensees or other entities during construction of new power reactors. The guide would apply to certain current and future applicants for, and holders of, power reactor licenses and construction permits under 10 CFR part 50 and power reactor licenses and early site permits under 10 CFR part 52. Issuance of DG-5036, if finalized, would not constitute backfitting under 10 CFR part 50 and would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the "Implementation" section of DG-5036, the NRC has no current intention to impose the DG, if finalized, on current holders of 10 CFR part 50 operating licenses or 10 CFR part 52 combined licenses.

This DG, if finalized, could be applied to applications for certain 10 CFR part 50 operating licenses or construction permits and 10 CFR part 52 combined licenses and early site permits. Such action would not constitute backfitting as defined in 10 CFR 50.109 or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch

as such applicants are not within the scope of entities protected by 10 CFR 50.109 or the relevant issue finality provisions in 10 CFR part 52.

Dated at Rockville, Maryland, this 20<sup>th</sup> day of November, 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce, Chief,  
Regulatory Guidance and Generic Issues Branch,  
Division of Engineering,  
Office of Nuclear Regulatory Research.

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