



[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: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new regulatory guide (RG), RG 5.84, "Fitness-for-Duty Programs at New Reactor Construction Sites." This RG provides guidance for implementing fitness-for-duty (FFD) requirements at nuclear power plant construction sites.

ADDRESSES: Please refer to Docket ID **NRC-2014-0253** when contacting the NRC about the availability of information regarding this document. You may 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-2014-0253**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: 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 e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 0 of Regulatory Guide 5.84, is available in ADAMS under Accession No. ML15083A412. The regulatory analysis may be found in ADAMS under Accession No. ML14218A861.

- **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.

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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 regarding 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 issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

Revision 0 of RG 5.84 was issued with a temporary identification as Draft Regulatory Guide, 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, 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 RG 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), with one exception.

II. Additional Information

DG-5036 was published in the *Federal Register* on November 28, 2014 (79 FR 70898), for a 60-day public comment period. The public comment period closed on January 27, 2015. Public comments on DG-5036 and the staff responses to the public comments are available under ADAMS Accession Number ML15083A410.

III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

This regulatory guide provides 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 nuclear power reactors. The guide applies 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 RG 5.84 does not constitute backfitting under 10 CFR part 50 and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the "Implementation" section of RG 5.84, the NRC has no current intention to impose the RG on current holders of 10 CFR part 50 operating licenses or 10 CFR part 52 combined licenses.

This RG 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 7th day of August, 2015.

For the Nuclear Regulatory Commission.

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