



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0126]

Physical Security Hardware - Inspections, Tests, Analyses, and Acceptance Criteria

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision: request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on draft NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Section 14.3.12, "Physical Security Hardware - Inspections, Tests, Analyses, and Acceptance Criteria." The NRC seeks comments on the draft section revision of the standard review plan (SRP) concerning inspections, tests, analyses, and acceptance criteria (ITAAC) related to physical security hardware (PS-ITAAC).

DATES: Comments must be filed no later than **[INSERT DATE 30 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 Commission is able to ensure consideration only for comments received on or before this date.

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-2016-0126**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: OWFN-12-H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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

FOR FURTHER INFORMATION CONTACT: Mark Notich, Office of New Reactors, telephone: 301-415-3053, e-mail: Mark.Notich@nrc.gov; or Nishka Devaser, Office of New Reactors, telephone: 301-415-5196; e-mail: Nishka.Devaser@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-2016-0126** 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-2016-0126**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**
You may obtain publicly available documents online in the ADAMS Public Documents collection 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 numbers for the draft revision, current revision, and redline strikeout comparing the current revision and the draft revision of the section are available in ADAMS under the following accession numbers: draft revision 2 (ML16032A050), current revision 1 (ML100970568), and redline strikeout (ML16032A096).

- **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-2016-0126** in your comment submission

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 enter 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 into ADAMS.

II. Further Information

The NRC seeks public comment on the draft section revision of the SRP. This section has been revised to assist NRC staff with the review of PS-ITAAC in a combined license application or a design certification application. The PS-ITAAC are reviewed to determine whether the designs and specifications for PS-ITAAC are in accordance with the applicable regulatory requirements of 10 CFR part 73.

Revision 2 to SRP Section 14.3.12 incorporates the requirements for vehicle control measures under § 73.55(e)(10)(i)(B) of title 10 of the *Code of Federal Regulations* (10 CFR) and incorporates recommendations from NRC Regulatory Issue Summary 2008-05, "Lessons Learned to Improve Inspections, Tests, Analyses, and Acceptance Criteria Submittal" revision 1, September 23, 2010. The technical changes in accordance with the new § 73.55 are incorporated in each section of this revision (since Revision 1 of this section, dated April 2010) of the SRP as applicable.

Following NRC staff evaluation of public comments, the NRC intends to incorporate the final approved guidance into the next revision of NUREG-0800. The SRP is guidance for the

NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required.

III. Backfitting and Issue Finality

Issuance of this draft SRP, if finalized, would not constitute backfitting as defined in § 50.109 of 10 CFR, (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, would not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.*

The SRP provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal NRC staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on current licensees or already-issued regulatory approvals either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing (already issued) licenses and regulatory approvals. Hence, the issuance of a final SRP – even if considered guidance which is within the purview of the issue finality provisions in 10 CFR part 52 – need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a

position in the SRP on holders of already issued licenses SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described applicable issue finality provision.

3. *Backfitting and issue finality do not – with limited exceptions not applicable here – protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52 – with certain exclusions discussed below – were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the draft SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 5th day of July 2016.

For the Nuclear Regulatory Commission.

Joseph Colaccino, Chief,
New Reactor Rulemaking and Guidance Branch,
Division of Engineering,
Infrastructure and Advanced Reactors,
Office of New Reactors.

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