



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2017-0111]

Proposed Revisions to Conduct of Operations

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 13.6.1, “Physical Security – Combined License and Operating Reactors.” The NRC seeks comments on the proposed draft section revision of the Standard Review Plan (SRP) concerning guidance for the review of combined construction and operating license (COL) and operating license (OL) applications and amendments for physical security.

DATES: Comments must be filed no later than **[INSERT DATE 60 DAYS AFTER 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:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2017-0111**. Address questions about NRC dockets to Carol Gallagher;

telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Office of Administration, Mail Stop: TWFN-08-D36, 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 D. Notich, Office of New Reactors, telephone: 301-415-3053; e-mail Mark.Notich@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-2017-0111** when contacting the NRC about the availability of information regarding this action. 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-2017-0111**.

- **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 draft revision and current revision to NUREG-0800, Section 13.6.1, "Physical Security – Combined License and Operating Reactors," are available in ADAMS under Accession Nos. ML17101A741 and ML102230082. The redline strikeout comparing the current version and draft revision is available in ADAMS under Accession No. ML 14295A061.

- **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-2017-0111** 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 proposed draft section revision of SRP Section 13.6.1. The changes to SRP Chapter 13 reflect the current staff reviews, methods and practices based on lessons learned from the NRC's reviews of design certification and combined license applications completed since the last revision of this chapter. The draft SRP section would also provide guidance for reviewing an application for a combined license under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR).

Following NRC staff evaluation of public comments, the NRC intends to incorporate the approved revisions 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 section, if finalized, would not constitute backfitting as defined in 10 CFR 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 to NRC staff 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 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 intentions 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 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 in the 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 provisions, then the NRC staff must address the criteria for avoiding issue finality provisions.

Dated at Rockville, Maryland, this 1st day of May, 2017.

For the Nuclear Regulatory Commission.

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

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