



7590-01-P

## **NUCLEAR REGULATORY COMMISSION**

**[NRC–2017–0111]**

### **Physical Security—Combined License And Operating Reactors**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard review plan-final section revision; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 13.6.1, “Physical Security—Combined License and Operating Reactors,” of NUREG-0800, “Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.”

**DATES:** The effective date of this SRP update is **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Please refer to Docket ID **NRC–2017–0111** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using 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 Jennifer Borges; telephone: 301-287-9127; e-mail: [Jennifer.Borges@nrc.gov](mailto:Jennifer.Borges@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3053, e-mail: [Mark.Notich@nrc.gov](mailto:Mark.Notich@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On May 5, 2017 (82 FR 21269 ), the NRC published for public comment a proposed revision of Section 13.6.1, “Physical Security – Combined License and Operating Reactors,” of NUREG-0800, “Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.” The public comment period closed on July 5, 2017. A summary of comments received and the staff’s disposition of the comments are available in a separate document, “Response to Public Comments on Draft Standard Review Plan, Section 13.6.1, “Physical Security – Combined License and Operating Reactors,” (ADAMS Accession No. ML17291B250). A redline/strikeout version showing incorporation of public comments is available in a separate document (ADAMS Accession No. ML17311A121).

### **II. Backfitting and Issue Finality**

Chapter 13 of the SRP provides guidance to the staff for conduct of operations under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). Section 13.6.1 of the SRP provides guidance for the review of combined license (COL) and operating license (OL) applications and amendments for physical security.

Issuance of this SRP section revision does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC’s position is based upon the following considerations.

1. *The SRP positions would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal 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 intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing licenses and regulatory approvals. Hence, the issuance of this SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—does not need to 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 that does not provide issue finality as described in the applicable issue finality provision, then the 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. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that 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) 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 SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

### **III. Congressional Review Act**

This action is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

Dated at Rockville, Maryland, this 8<sup>th</sup> day of August, 2018.

For the Nuclear Regulatory Commission.

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