

#### IV. Backfitting and Issue Finality

Draft Regulatory Guide 1.27 provides guidance on one possible means for meeting NRC's regulatory requirements of the general design criteria (GDC) in appendix A, "General Design Criteria for Nuclear Power Plants," to part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), which are applicable to the ultimate heat sink features of nuclear power plant systems. This draft regulatory guide, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52, "Licenses, Certifications and Approvals for Nuclear Power Plants." The NRC's position is based upon the following considerations.

Draft Regulatory Guide 1.27 may be applied to current applications for operating licenses, combined licenses, early site permits, and certified design rules docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in 10 CFR 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 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 a combined license applicant references a 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 does not, at this time, intend to impose the positions represented in draft Regulatory Guide 1.27 on combined license applicants in a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC seeks to impose a position in Regulatory Guide 1.27 in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Existing part 50 construction permit holders and part 50 operating license holders would not be required to comply with the positions set forth in draft Regulatory Guide 1.27, unless the construction permit or operating license holder makes a voluntary change to its licensing basis with respect to the

ultimate heat sink (UHS) features of plant systems and the NRC determines that the safety review must include consideration of the ultimate heat sink (UHS) features of plant systems.

Existing design certification rules would not be required to be amended to comply with the positions set forth in draft Regulatory Guide 1.27, unless the NRC addresses the issue finality provisions in 10 CFR 52.63(a).

Existing combined license holders (referencing the AP1000 design certification rule in 10 CFR part 52, appendix D), would not be required to comply with the positions set forth in draft Regulatory Guide 1.27, unless the NRC addresses the issue finality provisions in 10 CFR 52.63(a).

Further information on the staff's use of the draft regulatory guide, if finalized, is contained in Regulatory Guide 1.27 under section D. *Implementation*.

Dated at Rockville, Maryland, this 26th day of August, 2013.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

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#### NUCLEAR REGULATORY COMMISSION

[NRC-2013-0202]

##### Seismic Instrumentation for Nuclear Power Plants

**AGENCY:** Nuclear Regulatory Commission.

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

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) seeks public comments on the proposed revisions to the following section in Chapter 3, "Design of Structures, Components, Equipment, and Systems" and soliciting public comment on NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Section 3.7.4, "Seismic Instrumentation."

**DATES:** Submit comments by October 9, 2013. 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 comment 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-2013-0202. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; email: [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, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN, 06-44M, 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:**

Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-6992, email: [Jonathan.DeGange@nrc.gov](mailto:Jonathan.DeGange@nrc.gov).

##### **SUPPLEMENTARY INFORMATION:**

##### **I. Accessing Information and Submitting Comments**

###### *A. Accessing Information*

Please refer to Docket ID NRC-2013-0202 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2013-0202.

- *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 email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS Accession numbers for the redline document comparing the current revision and the proposed revision are available in ADAMS under Accession Nos. Section 3.7.4 Proposed Revision 3 (ML12304A031), Current Revision 2 (ML070460349) and Redline (ML12304A035).

- *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–2013–0202 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 posts all comment submissions at <http://www.regulations.gov> as well as entering 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. Further Information

The Office of New Reactors and Office of Nuclear Reactor Regulation proposes to revise Section 3.7.4 in Chapter 3 of NUREG–0800, “Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition” (SRP, from the current Revision 2 to a new Revision 3).

The proposed changes to this SRP section reflect current staff review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this chapter. Changes included a clarification that a transfer function is needed between elevation of the definition of the operating basis earthquake and the location of the seismic instrumentation, and a clarification that suitable seismic instrumentation promptly evaluates the seismic response of safety-related or risk-significant plant features after an earthquake.

The NRC staff requests public comments on the proposed revisions to SRP Section 3.7.4 in Chapter 3. After the NRC staff considers any public comments, it will make a determination regarding the issuance of the proposed SRP Section 3.7.4 in final form.

## Backfitting and Issue Finality

This draft SRP section, if finalized, would provide guidance to the staff with respect to seismic instrumentation when reviewing future applications for construction permits and operating licenses under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR). The draft SRP would also provide guidance for reviewing an and future applications for standard design approvals, standard design certifications, and combined licenses under 10 CFR part 52 with respect to those same subject matters. The NRC staff does not intend to impose the positions in the draft SRP sections, if finalized, on the two existing OL applications, the current applications for design certification rules, the current applications for early site permits, the two current holders of combined licenses, or the current applications for combined licenses. Issuance of this draft SRP section, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The staff's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, do not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides interim guidance to the 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 applicants or licensees are protected under 10 CFR 50.109 or issue finality provisions in part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not 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 section (if finalized) in a manner

that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP section (if finalized) in a manner which 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.

3. *The staff has no intention to impose the draft SRP positions on existing nuclear power plant licenses or regulatory approvals either now or in the future (absent a voluntary request for change from the licensee, holder of a regulatory approval, or a design certification applicant).*

The NRC staff does not intend to impose or apply the positions described in the draft SRP section to existing (already issued) licenses (e.g., operating licenses and combined licenses) and regulatory approvals—in this case, design certifications. Hence, the draft 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 staff seeks to impose a position in the draft SRP (if finalized) 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 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, as applicable.

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Section in Chapter 3. After the NRC staff considers any public comments, it will make a determination regarding the proposed SRP Section in Chapter 3.

Dated at Rockville, Maryland, this 26th day of August, 2013.

For the Nuclear Regulatory Commission.

### Joseph Colaccino,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

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