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[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0180]

Adequacy of Design Features and Functional Capabilities Identified and Described for Withstanding Aircraft Impacts

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan section; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new section of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition." The new section, designated as Revision 0, is Section 19.5, "Adequacy of design features and functional capabilities identified and described for withstanding aircraft impacts."

DATES: The effective date of this Standard Review Plan (SRP) update is [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Please refer to Docket ID **NRC-2012-0180** 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, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2012-0180**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual(s) listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **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. Final Revision 0 to NUREG-0800 is available in ADAMS under Accession No. ML12276A112.

- **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.

- The NRC posts its issued staff guidance on the NRC's external Web page (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>).

FOR FURTHER INFORMATION CONTACT: Ms. Anna H. Bradford, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1560, e-mail: <mailto:Anna.Bradford@nrc.gov>.

SUPPLEMENTARY INFORMATION:

On August 2, 2012 (77 FR 46128), the NRC published for public comment the proposed

Revision 0 to Section 19.5, “Adequacy of design features and functional capabilities identified and described for withstanding aircraft impacts,” (ADAMS Accession No. ML12138A468). Three comment submissions were received on the proposed revision (ADAMS Accession Nos.: ML12249A406, ML12237A139 and ML12258A071). The staff made changes to the proposed revision after consideration of the comments. A summary of the comments and the staff’s disposition of the comments are available in a separate document, *Response to Public Comments On Draft Standard Review Plan (SRP) 19.5: Adequacy Of Design Features And Functional Capabilities Identified And Described For Withstanding Aircraft Impacts* (ADAMS Accession No. ML12306A341). The staff has also prepared a redline version of the SRP section showing the difference between the proposed and final SRP section (ADAMS Accession No. ML12307A168).

The NRC staff will incorporate the positions reflected in Revision 0 of SRP Section 19.5 into the next revision of Regulatory Guide 1.206, “Combined License Applications for Nuclear Power Plants” (ADAMS Accession No. ML070720184).

Backfitting and Issue Finality

Issuance of this final SRP section does not constitute backfitting as defined in § 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in part 52 of 10 CFR. The staff’s position is based upon the following considerations:

- The SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities
- The SRP positions represent the first internal NRC guidance on a regulation for which the backfitting and issue finality considerations have already been addressed.
- The NRC staff has no intention to impose the SRP positions on current licensees and regulatory approvals either now or in the future

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

Each of these considerations is discussed in more detail below.

1. *The SRP positions do 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 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 part 52.

2. *The SRP positions represent the first internal NRC guidance on a regulation for which the backfitting and issue finality considerations have already been addressed.*

This SRP addresses compliance with the Aircraft Impact Assessment (AIA) Rule, 10 CFR 50.150. The backfitting and issue finality issues for this rulemaking were addressed as part of the original AIA rulemaking (74 FR 28112, 28143-45; June 12, 2009). Inasmuch as the SRP merely implements the AIA Rule, the SRP introduces no new backfitting or issue finality matters apart from those addressed in the underlying rulemaking. Therefore, the staff's position is that the NRC's consideration of backfitting and issue finality matters for the underlying AIA rulemaking also serves as the NRC's consideration of the same backfitting and issue finality matters for the issuance of this SRP.

3. *The NRC staff has no intention to impose the SRP positions on current licensees and regulatory approvals either now or in the future*

The staff does not intend to impose or apply the positions described in the 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 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 SRP on holders of

already issued holders of licenses SRP 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.

4. *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 part 52. This is because 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 an applicant references a 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 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 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.

CONGRESSIONAL REVIEW ACT:

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 25th day of April 2013.

For the Nuclear Regulatory Commission.

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Policy Branch
Division of Advanced Reactors and Rulemaking
Office of New Reactors

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