



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2013-0140]

Draft Spent Fuel Storage and Transportation Interim Staff Guidance

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft interim staff guidance; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) requests public comment on Draft Spent Fuel Storage and Transportation Interim Staff Guidance No. 24 (SFST-ISG-24), Revision 0, "The Use of a Demonstration Program as Confirmation of Integrity for Continued Storage of High Burnup Fuel Beyond 20 Years." The draft SFST-ISG provides guidance to the staff for reviewing if a demonstration of high burnup fuel (HBF) has the necessary properties to qualify as one method that an applicant might use in license and certificate of compliance (CoC) applications to demonstrate compliance with the NRC's regulations. This guidance applies to license and CoC applications for the storage of HBF for periods greater than 20 years.

DATES: Submit comments by **[INSERT DATE 45 DAYS FROM THE DATE OF PUBLICATION]**. Comments received after this date will be considered if it is practical to do so; however, the NRC is only able to ensure consideration of 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-2013-0140**. 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.

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0140**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, 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: Robert Einziger, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-9217 or e-mail: Robert.Einziger@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID **NRC-2013-0140** 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 the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0140**.

- **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 pdresource@nrc.gov. The draft SFST-ISG-24, Revision 0 is available electronically under ADAMS Accession No. ML13056A516.

- **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-2013-0140** 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. Background

The NRC issues SFST-ISGs to communicate insights and lessons learned and to address emergent issues not covered in SFST Standard Review Plans (SRPs). In this way, the NRC staff and stakeholders may use the guidance in an SFST-ISG document before it is incorporated into a formal SRP revision. The draft SFST-ISG provides guidance to the staff for reviewing if a demonstration of high burnup fuel (HBF) has the necessary properties to qualify as one method that an applicant might use in license and certificate of compliance (CoC) applications to demonstrate compliance with sections 72.122(h)(1) and 72.122(l) of Title 10 of the *Code of Federal Regulations* (10 CFR). This guidance applies to license and CoC applications for the storage of HBF for periods greater than 20 years. This guidance supplements the guidance given in NUREG-1927 “Standard Review Plan for Renewal of Spent Fuel Dry Cask Storage System Licenses and Certificates of Compliance” on aging management for the interior of the cask.

Proposed Action

By this action, the NRC is requesting public comments on draft SFST-ISG-24. This SFST-ISG proposes certain revisions to NRC guidance on implementation of the requirements in 10 CFR Part 72. The NRC will make a final determination regarding issuance of SFST-ISG-24 after it considers any public comments received in response to this request.

Backfitting and Issue Finality

This draft ISG, if finalized, would provide guidance to the staff for reviewing an application for an independent spent fuel storage Installation, and an application for a certificate of compliance, either of which involve storage of high-burn-up spent fuel from a nuclear power plant, with respect to compliance with 10 CFR 72.122(h)(1) and 10 CFR 72.122(l).

Issuance of this draft ISG, if finalized, would not constitute backfitting as defined in the backfitting provisions in 10 CFR 72.62 which are applicable to ISFSIs and certificates of compliance. Issuance of the draft ISG, if finalized, would also not constitute backfitting under 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.

- The draft ISG positions do not constitute backfitting, inasmuch as the ISG is internal guidance directed at the NRC staff with respect to their regulatory responsibilities
- Backfitting and issue finality – with limited exceptions not applicable here – do not protect current or future applicants
- The NRC staff has no intention to impose the draft ISG positions on existing ESP, DCR, and COL applicants where the staff has resolved the applicant's conformance with RG 1.221 as of the effective date of this guidance
- The NRC staff has no intention to impose the draft ISG positions on current licensees or the four current design certifications (10 CFR Part 52, Appendices A through D) either now or in the future

Each of these considerations is discussed in more detail below.

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

The ISG 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 either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of Part 52.

2. 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 draft ISG 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 ISG 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. The draft ISG addresses newly-adopted or revised regulations whose backfitting and issue finality considerations have already been addressed

3. The NRC staff has no intention to impose the draft ISG positions on existing early site permit, design certificate and combined license applicants where the staff has resolved the applicant's conformance with RG 1.221 as of the effective date of this guidance.

Notwithstanding the NRC's general principle, articulated in Item 2 above, that Backfitting and Issue Finality do not protect applicants, the draft ISG is not backfitting because the NRC does not intend to impose the draft ISG positions on existing ESP, DCR, and COL applicants where the staff has resolved the applicant's conformance with RG 1.221 as of the effective date of this guidance.

4. The NRC staff has no intention to impose the draft ISG positions on existing licensees and regulatory approvals, either now or in the future.

The staff does not intend to impose or apply the positions described in the draft ISG section to existing (already issued) licenses and regulatory approvals - including the four existing design certifications in 10 CFR part 52, Appendices A through D. Hence, the issuance of a final ISG – 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 ISG on holders of already issued holders of licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must, as applicable, make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described applicable issue finality provision.

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

For the Nuclear Regulatory Commission.

Mark D. Lombard, Director,
Division of Spent Fuel Storage and Transportation,
Office of Nuclear Material Safety
and Safeguards

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