



NUCLEAR REGULATORY COMMISSION

[NRC-2012-0237]

**Regulatory Treatment of Non-Safety Systems for
Passive Advanced Light Water Reactors**

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to the following section of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition" Section 19.3, "Regulatory Treatment of Non-Safety Systems (RTNSS) for Passive Advanced Light Water Reactors."

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-2012-0237** 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-2012-0237**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual 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 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 final revision for Section 19.3, "Regulatory Treatment of Non-Safety Systems (RTNSS) for Passive Advanced Light Water Reactors." is available under ADAMS Accession No ML14035A149.

- **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 at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>.

FOR FURTHER INFORMATION CONTACT: Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6992 or e-mail: Jonathan.Degange@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 12, 2012 (77 FR 62270) the NRC staff published for public comment the initial issuance of Section 19.3, "Regulatory Treatment of Non-Safety Systems (RTNSS) for Passive Advanced Light Water Reactors," (ADAMS Accession No. ML12128A405).

The NRC staff received comment submissions on the proposed revision. The NRC staff made several changes to the proposed revision after consideration of the comments. Additionally, in July 2013 (78 FR 41436) the staff re-noticed the draft SRP section to include a revised position on treatment of the high winds external hazard for certain RTNSS structures, systems and components. Comments from both the original request for comment and subsequent re-issuance are documented alongside the NRC staff's respective response in ADAMS under Accession No. ML14035A148. A redline strikeout comparing the proposed draft and final revisions can be found in ADAMS under Accession No. ML14035A146.

II. Backfitting and Issue Finality

This SRP provides guidance to the staff for reviewing applications for a construction permit and an operating license under part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) with respect to the regulatory treatment of non-safety systems. The draft SRP would also provide guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52 with respect to these same subject matters.

Issuance of this final SRP section does 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. The NRC staff's position is based upon the following considerations:

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 10 CFR 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 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 staff does not currently intend to impose the positions represented in this SRP section in a manner that is inconsistent with any issue finality provisions of 10 CFR part 52. If in the future the NRC staff does indeed intend to impose positions inconsistent with these issue finality provisions, the NRC staff must address the regulatory criteria for avoiding issue finality.

The staff notes that with respect to economic simplified boiling water reactor (ESBWR) design certification application currently under consideration by the NRC, the NRC staff does not intend to reevaluate the adequacy of RTNSS SSCs, because for the ESBWR design already meets the guidance discussed in this SRP Section.

3. The NRC staff has no intention to impose the 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 staff does not intend to impose or apply the positions described in the SRP section to existing (already issued) licenses (e.g., operating licenses and combined licenses) and regulatory approvals—in this case, design certifications and combined licenses. Hence, the issuance of this SRP guidance 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 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 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.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 23rd day of June, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino, Chief,
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Division of Advanced Reactors and Rulemaking,
Office of New Reactors.

