



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0145]

Branch Technical Position 5-3, Fracture Toughness Requirements

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 Branch Technical Position (BTP) 5-3, "Fracture Toughness Requirements," of NUREG-0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition."

DATES: **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

ADDRESSES: Please refer to Docket ID **NRC-2018-0145** 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-2018-0145**. Address questions about NRC docket IDs in Regulations.gov to Krupskaya Castellon; telephone: 301-287-9221; e-mail: Krupskaya.Castellon@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 obtain publicly available documents online in the ADAMS Public Document collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, 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.

- **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.

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.

SUPPLEMENTARY INFORMATION:

I. Background

On July 13, 2018 (83 FR 32690), the NRC published for public comment a proposed revision of BTP 5-3, "Fracture Toughness Requirements," of NUREG-0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition." On September 20, 2018 (83 FR 47647), the NRC reopened the public comment period on this document for 30 days to allow more time for members of the public to review additional revisions that the NRC made to BTP 5-3 since the draft was issued on July 13, 2018, and to assemble and submit their comments. The public comment period closed on October 22, 2018. A summary of comments received and the NRC staff's disposition of the comments are available in a separate document, "Response to Public Comments on Draft SRP BTP 5-3, "Fracture Toughness Requirements," (ADAMS Accession No. ML18338A517).

II. Backfitting and Issue Finality

Chapter 5 of the SRP provides guidance to the staff for reviewing reactor coolant and connected systems information included in licensing applications. BTP 5-3 of the

SRP provides guidance for the review of information addressing piping systems and components.

Issuance of this SRP section revision does not constitute backfitting as defined in section 50.109 (the Backfit Rule) of the *Code of Federal Regulations* (10 CFR) 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 do not constitute backfitting, inasmuch as the SRP is guidance directed to the NRC staff with respect to its regulatory responsibilities.*

The SRP provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in guidance intended for use by only the staff are not matters that constitute backfitting as that term is defined in 10 CFR 50.109(a)(1) or involve the issue finality provisions of 10 CFR part 52.

2. *Backfitting and issue finality - with certain exceptions discussed below - do not apply to current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, the subject of 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 of 10 CFR part 52 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 a 10 CFR part 50 operating license applicant references a construction permit or a 10 CFR part 52 combined license applicant references a license (e.g., an early site permit) and/or an

NRC regulatory approval (e.g., a design certification rule) for which specified issue finality provisions apply.

The NRC staff does not currently intend to impose the positions represented in this final SRP section in a manner that constitutes backfitting or is inconsistent with any issue finality provision of 10 CFR part 52. If in the future the NRC staff seeks to impose positions stated in this SRP section in a manner that would constitute backfitting or be inconsistent with these issue finality provisions, the NRC staff must make the showing as set forth in the Backfit Rule or address the regulatory criteria set forth in the applicable issue finality provision, as applicable, that would allow the staff to impose the position.

3. The NRC staff has no intention to impose the SRP positions on existing nuclear power plant licensees either now or in the future (absent a voluntary request for a 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 this final SRP section to existing (already issued) licenses (e.g., operating licenses and combined licenses) and regulatory approvals. Hence, the issuance of this SRP guidance - even if considered guidance subject to the Backfit Rule or the issue finality provisions in 10 CFR part 52 - would 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 would constitute backfitting or does not provide issue finality as described in the applicable issue finality provision, then the staff must make a showing as set forth in the Backfit Rule or address the criteria set forth in the applicable issue finality provision, as applicable, that would allow the staff to impose the position.

III. Congressional Review Act

The Office of Management and Budget makes the determination that the United States Nuclear Regulatory Commission action titled “NUREG-0800, “Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,” Branch Technical Position 5-3, ‘Fracture Toughness Requirements’” is non-major under the Congressional Review Act.

Dated at Rockville, Maryland, this 15th day of March, 2019.

For the Nuclear Regulatory Commission.

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