

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 are revising Section 3.5.1.4 of the SRP from the current revision 3. Changes in this revision include new guidance for hurricane winds and associated missiles from RG 1.221, "Design-Basis Hurricane and Hurricane Missiles for Nuclear Power Plants" (ADAMS, Accession No. ML110940300), and Interim Staff Guidance DC/COL-ISG-024, "Implementation of Regulatory Guide 1.221 on Design-Basis Hurricane and Hurricane Missiles" (ADAMS Accession No. ML13015A693).

The NRC staff is issuing this notice to solicit public comments on the proposed revision 4 of Section 3.5.1.4 of the SRP. After the NRC staff considers any public comments, it will make a determination regarding the proposed revision to Section 3.5.1.4.

III. Backfitting and Issue Finality

This draft SRP, if finalized, would provide 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 missiles generated by extreme winds. 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 those same subject matters.

Issuance of this draft SRP, 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 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 under 10 CFR Part 52—with certain exclusions discussed below—were intended 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, 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 make 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 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 holders of 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.

Dated at Rockville, Maryland, this 1st day of August 2013.

For the Nuclear Regulatory Commission.

George M. Tartal,

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

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NUCLEAR REGULATORY COMMISSION

[NRC-2013-0179]

Proposed Revisions to Maintenance Rule Standard Review Plan

AGENCY: Nuclear Regulatory Commission.

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

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising the following section in Chapter 17, "Quality Assurance" and soliciting public comment on NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Section 17.6, "Maintenance Rule."

DATES: Comments must be filed no later than September 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-2013-0179. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; email: 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-06A56, 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 or email: Jonathan.DeGange@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0179 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–2013–0179.

- *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. The ADAMS Accession numbers for the redline document comparing the current revision and the proposed revision are available in ADAMS under Accession Nos. Section 17.6, Proposed Revision 2 (ML13015A125), Current Revision 1 (ML072920088), Redline (ML13015A426).

- *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, MD 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0179 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 are revising this section from the current Revision 1. Changes in this revision include revised scoping and the new generic FSAR template guidance in the review procedures section, and revised references. Details of specific changes are included at the end of the proposed section.

The changes to this Standard Review Plan (SRP) Chapter 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 include removal of reference to Regulatory Guide (RG) 1.182 which was superseded by RG 1.160 and adding reference to industry guidance Nuclear Energy Institute (NEI) 07–02A (ADAMS Accession No. ML103410542).

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Section in Chapter 17. After the NRC staff considers any public comments, it will publish a final SRP Section in Chapter 17.

Backfitting and Issue Finality

This draft SRP, if finalized, would provide guidance to the NRC 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 compliance with the Maintenance Rule, 10 CFR 50.65 and the guidance in Nuclear Management and Resources Council (NUMARC) 93–01 as approved for use by the NRC in Regulatory Guide (RG) 1.160. 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 SRP draft section revision, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR Part 52. The NRC's position is based upon the following considerations.

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

The SRP provides internal guidance to the NRC 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. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of 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 does not provide issue finality as described in the applicable issue finality provision, then the NRC 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.

3. *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 10 CFR Part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR Part 52—with certain exclusions—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 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 in a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must address the criteria

for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland this 30th day of July 2013.

For the Nuclear Regulatory Commission.

George M. Tartal,

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

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PENSION BENEFIT GUARANTY CORPORATION

Approval of Amendment to Special Withdrawal Liability Rules the I.A.M. National Pension Fund National Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: The I.A.M. National Pension Fund National Pension Plan ("I.A.M. Fund") requested the Pension Benefit Guaranty Corporation ("PBGC") to approve a plan amendment providing for special withdrawal liability rules for certain employers that maintain the I.A.M. Fund. PBGC published a Notice of Pendency of the Request for Approval of the amendment on December 26, 2012 (77 FR 76090) ("Notice of Pendency"). In accordance with the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), PBGC is now advising the public that the agency has approved the requested amendment.

FOR FURTHER INFORMATION CONTACT: Beth A. Bangert, Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026; Telephone 202-326-4020 (For TTY/TDD users, call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020).

SUPPLEMENTARY INFORMATION:

Background

Under § 4201 of ERISA, an employer who completely or partially withdraws from a defined benefit multiemployer pension plan becomes liable for a proportional share of the plan's unfunded vested benefits. The statute specifies that a "complete withdrawal" occurs whenever an employer either permanently (1) ceases to have an obligation to contribute to the plan, or (2) ceases all operations covered under the plan. See ERISA § 4203(a). Under the second test, therefore, an employer

who closes or sells its operations will incur withdrawal liability. Under the first test, an employer who remains in business but who no longer has an obligation to contribute to the plan also is liable. The "partial withdrawal" provisions of §§ 4205 and 4206 impose a lesser measure of liability upon employers who greatly reduce, but do not eliminate, the operations that generate contributions to the plan. The withdrawal liability provisions of ERISA are a critical factor in maintaining the solvency of these pension plans and reducing claims made on the multiemployer plan guaranty fund maintained by PBGC. Without withdrawal liability rules, an employer who participates in an underfunded multiemployer plan would have a powerful economic incentive to reduce expenses by withdrawing from the plan.

Congress nevertheless allowed for the possibility that, in certain industries, the fact that particular employers go out of business (or cease operations in a specific geographic region) might not result in permanent damage to the pension plan's contribution base. In the construction industry, for example, the work must necessarily take place at the construction site; if that work generates contributions to the pension plan, it does not much matter which employer does the work. Put another way, if a construction employer goes out of business, or stops operations in a geographic area, pension plan contributions will not diminish if a second employer who contributes to the plan fills the void. The plan's contribution base is damaged, therefore, only if the employer stops contributing to the plan but continues to perform construction work in the jurisdiction of the collective bargaining agreement.

This reasoning led Congress to adopt a special definition of the term "withdrawal" for construction industry plans. Section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, but the employer nevertheless performs previously covered work in the jurisdiction of the collective bargaining agreement anytime within five years after the employer ceased its contributions.¹ There is a parallel rule for partial withdrawals from

construction plans. Under § 208(d)(1) of ERISA, "[a]n employer to whom § 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required."

Section 4203(f) of ERISA provides that PBGC may prescribe regulations under which plans that are not in the construction industry may be amended to use special withdrawal liability rules similar to those that apply to construction plans. Under the statute, the regulations "shall permit the use of special withdrawal liability rules . . . only in industries" that PBGC determines share the characteristics of the construction industry. In addition, each plan application must show that the special rule "will not pose a significant risk to the [PBGC] insurance system." Section 4208(e)(3) of ERISA provides for parallel treatment of partial withdrawal liability rules.

The regulation on Extension of Special Withdrawal Liability Rules (29 CFR part 4203), prescribes the procedures a multiemployer plan must follow to request PBGC approval of a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule must be similar to the statutory provision that applies to construction industry plans under § 4203(b) of ERISA. Any special rule for partial withdrawals must be consistent with the construction industry partial withdrawal provisions.

Each request for approval of a plan amendment establishing special withdrawal liability rules must provide PBGC with detailed financial and actuarial data about the plan. In addition, the applicant must provide PBGC with information about the effects of withdrawals on the plan's contribution base. As a practical matter, the plan must show that the characteristics of employment and labor relations in its industry are sufficiently similar to those in the construction industry that use of the construction rule would be appropriate. Relevant factors include the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed. PBGC

¹ Section 4203(c)(1) of ERISA applies a similar definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. No plan has ever requested PBGC to determine that it shares the characteristics of an entertainment plan.