

**RESPONSE TO REQUIREMENTS FOR CONTENT OF PACKAGE
SUBMITTED FOR CRGR REVIEW**

- (i) **The new or revised generic requirement or staff position as it is proposed to be sent out to licensees or to be issued for public comments. The staff should focus on developing generic actions which are less prescriptive and are consistent with the NRC's move to performance-based and risk-informed regulation. The proposed requirement should merely specify the objective or result to be attained, rather than prescribing to the licensees how the objective or result is to be attained. The objective or intended result of a proposed generic requirement or staff position should be clearly stated such that it can be achieved by setting readily quantifiable standards, which have an unambiguous relationship to a readily measurable quantity, and is enforceable.**

The proposed regulatory guide DG-1139, "Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants," will endorse Nuclear Energy Institute's (NEI) guide NEI 04-02, "Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program Under 10 CFR 50.48(c)," Revision 0, and provide additional guidance to licensees who voluntarily adopt National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants," as an alternative to the prescriptive requirements of Appendix R or the Standard Review Plan, in accordance with 10 CFR 50.48(c).

- (ii) **Draft staff papers or other documents supporting the requirements or staff positions. (A copy of all materials referenced in the document shall be made available upon request to the CRGR staff. In the event a Committee member requests the CRGR staff to obtain a copy of any reference material for his or her use, copies of the said materials will be distributed to all members and will also be retained in the CRGR meeting files.)**

By Attachment 1 of this memorandum, the staff has forwarded the proposed regulatory guide to the CRGR.

- (iii) **Each proposed requirement or staff position shall contain the sponsoring office's position as to whether the proposal would modify requirements or staff positions, implement existing requirements or staff positions, or relax or reduce existing requirements or staff positions.**

The adoption of a performance-based fire protection program is a voluntary alternative and would provide guidance to licensees in complying with fire protection requirements in NFPA 805, a consensus standard for fire protection. The regulatory guide does not modify existing fire protection requirements. It provides one acceptable approach to complying with existing requirements.

- (iv) **The proposed method of implementation and resource implications, along with the concurrence (and any comments) of OGC on the method proposed, and the concurrence of all affected offices, including regions, or an explanation of any nonconcurrences.**

Implementation of the guidance provided by the regulatory guide will be assessed via pilot programs for the first two licensees to adopt 10 CFR 50.48(c) and, thereafter be monitored via the Reactor Oversight Process (ROP) including the triennial inspections of fire protection. New resources will be allocated for the pilot programs. Inspector guidance is being developed to aid in the inspection of the new rule and enforcement discretion is provided for self-identified noncompliances.

- (v) **Regulatory analysis generally conforming to the directives and guidance of NUREG/BR-0058 and NUREG/BR-0184, as applicable.⁽¹⁾ (This does not apply to backfits that ensure compliance or, define or redefine adequate protection. For power reactors, a documented evaluation is required as discussed under item (ix) of this Appendix. For nuclear material items, for the purpose of CRGR review of such items under this Charter, a similar documented evaluation should be provided by the staff as part of the CRGR review package.)**

A regulatory analysis was provided as part of the rule package for 10 CFR 50.48(c) (see 69 FR 33536). A separate regulatory analysis was not performed for the regulatory guide.

- (vi) **Identification of the category of power reactors or nuclear materials facilities or activities to which the proposed generic requirement or staff position is applicable (i.e., whether it is only applicable to future plants, operating plants, all pressurized water reactors (PWRs), all boiling water reactors (BWRs), specific nuclear steam supply system (NSSS) vendor types, specific vintage types plants, gaseous diffusion plants (GDPs), etc.).**

The regulatory guide applies to existing light water reactors either licensed or a construction permit holder regardless of type.

- (vii) **For proposed backfits, other than either the compliance or the adequate protection backfits, a backfit analysis as defined in the Backfit Rule (10 CFR 50.109 for power reactors and 10 CFR 76.76 for the GDPs) should be performed.^{(2) (3) (4)} The backfit analysis shall include, for each category of nuclear power reactor or nuclear facility or activity, an evaluation which demonstrates how the action should be prioritized and scheduled in light of other ongoing regulatory activities. The backfit analysis shall document for consideration pertinent information available concerning any of the following factors, as appropriate, and any other information, which is relevant and material to the proposed action:**

The rule that is the subject of the regulatory guide is a voluntary alternative and is not a backfit in accordance with 10 CFR 50.109 and therefore the backfit analysis described above is not required.

- (a) Statement of the specific objectives that the proposed action is intended to achieve;**
- (b) General description of the activity that the licensee or applicant would be required to perform in order to complete the action;**
- (c) Potential change in the risk to the public from the accidental release of radioactive material;**
- (d) Potential impact on radiological exposure of facility employees and other onsite workers;**
- (e) Installation and continuing costs associated with the action, including the cost of facility downtime or the cost of construction delay;**
- (f) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements and staff positions;**
- (g) The estimated resource burden on the NRC associated with the proposed action and the availability of such resources;**
- (h) The potential impact of differences in facility type, design, or age on the relevancy and practicality of the proposed action;**
- (i) Whether the proposed action is interim or final, and if interim, the justification for imposing the proposed action on an interim basis;**
- (j) For both rulemaking actions and proposed generic correspondence, staff evaluation of comments received as a result of the notice and comment process;⁽⁵⁾**
- (k) How the action should be prioritized and scheduled in light of other ongoing regulatory activities. The following information may be appropriate in this regard:**
 - 1. The proposed priority or schedule,**
 - 2. A summary of the current backlog of existing requirements awaiting implementation,**
 - 3. An assessment of whether implementation of existing requirements should be deferred as a result, and**

4. Any other information that may be considered appropriate with regard to priority, schedule, or cumulative impact. For example, could implementation be delayed pending public comment?

- (viii) For each proposed backfit analyzed pursuant to 10 CFR 50.109(a)(2), 10 CFR 72.62(c), or 10 CFR 76.76(a)(3), (i.e., for backfits other than either adequate protection backfits or compliance backfits), the proposing office director's determination, together with the rationale for the determination based on the consideration of the previous paragraphs (i) and (vii) above, that:

The rule that is the subject of the regulatory guide is not a backfit in accordance with 10 CFR 50.109.

- (a) A substantial increase in the overall protection of public health and safety or the common defense and security will be derived from the proposal;^{(6), (7)} and
 - (b) The direct and indirect costs of implementation for the facilities affected are justified in view of this increased protection.
- (ix) For adequate protection or compliance backfits affecting power reactors, evaluated pursuant to 10 CFR 50.109(a)(4) (or analogous provisions in 10 CFR 72.62 or 10 CFR 76.76, as appropriate,

The rule that is the subject of the regulatory guide is not a backfit in accordance with 10 CFR 50.109.

- (a) A documented evaluation consisting of:
 - (1) the objectives of the modification
 - (2) the reasons for the modification
 - (3) if the compliance exception is invoked,
 - (A) the requirements (e.g., Commission regulation, license condition, order) or written licensee commitments, for which compliance is sought.
 - (B) an assessment of risk/safety implications of not requiring licensees to immediately restore compliance, and the basis for determination that a reasonable concession could be allowed to defer restoration of compliance at a later time (e.g., next refueling outage).
 - (C) demonstrated consideration of other possible alternatives and rationale for rejecting them in favor of compliance backfitting.

(D) evaluation from cost-benefit considerations (not a full-blown regulatory analysis) and a rationale for compliance exception.

(4) If the adequate protection exception is invoked, the basis for concluding that the matter to be addressed involves adequate protection, and why current requirements (e.g., Commission regulation, license condition, order) or written licensee commitments do not provide adequate protection.

(b) in addition, for actions that were immediately effective (and therefore issued without prior CRGR review as discussed in Section III of the CRGR), the evaluation shall document the safety significance and appropriateness of the action taken and (if applicable) consideration of how costs contributed to selecting the solution among various acceptable alternatives.

(x) For each request for information from power reactor licensees under 10 CFR 50.54(f), which is for purposes other than to verify compliance with the facility's licensing basis, an evaluation that includes at least the following elements:

There are no requests for information under 10 CFR 50.54(f).

(a) A problem statement that describes the need for the information in terms of potential safety benefit.

(b) The licensee actions required and the cost to develop a response to the information request.

(c) An anticipated schedule for NRC use of the information.

(d) A statement affirming that the request does not impose new requirements on the licensee, other than submittal of the requested information.

(e) The proposing office director's determination that the burden to be imposed on the respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information.

(xi) For each proposed power reactor backfit analyzed pursuant to 10 CFR 50.109(a)(2) (i.e., backfits other than either adequate protection or compliance backfits), an assessment of how the proposed action relates to the Commission's Safety Goal Policy Statement.⁽⁹⁾

The rule that is the subject of the regulatory guide is not a backfit in accordance with 10 CFR 50.109.