

## **POLICY ISSUE (Information)**

March 31, 2011

SECY-11-0046

FOR: The Commissioners

FROM: Brian W. Sheron, Director  
Office of Nuclear Regulatory Research

SUBJECT: STATUS OF THE REGULATORY GUIDE UPDATE PROGRAM

### PURPOSE:

This paper provides the Commission with the status of the Regulatory Guide (RG) Update Program as directed in a memorandum from Chairman Diaz entitled, "Chairman Approval of an Acquisition for the Office of Nuclear Regulatory Research (RES) Job Code N6332, 'Technical Support for Revision of Regulatory Guides'," dated June 15, 2006 (ML072420378). This paper updates the previous annual status report to the Commission in SECY-10-0037 dated March 25, 2010 (ML100260432). This paper contains no new commitments.

### BACKGROUND:

Prior to the RG update program, agency staff reviewed RGs on an infrequent basis and revised them as resources were available. Unfortunately, this practice allowed many RGs to become outdated and of limited use for new licensing actions. The delays in replacing outdated RGs also resulted in some program offices developing alternate means to provide current guidance to licensees, certificate holders, applicants, and staff. These alternate means included NUREGs, Interim Staff Guidance (ISG), Branch Technical Positions (BTPs), Regulatory Issue Summaries (RISs), and other similar documents. As part of the RG update program, the staff is updating the outdated RGs and incorporating the latest guidance from various sources including NUREGs, ISGs, BTPs and RISs.

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In a memorandum to the Chairman dated June 1, 2006, the Office of Research (RES) staff provided a plan to update the RGs in 3 years, with a focus on updating those RGs needed to support new reactor applications (ML061450510). The Commission responded in a memorandum dated June 15, 2006, that authorized \$4.3 million for RES to procure contractor support services to assist with the RG Update Program.

In the initial RG update plan, the library of RGs was categorized into four phases based on priority and available resources. Phase 1 RGs were those needed to support new plant licensing and were completed by March 31, 2007. Phase 2 RGs were scheduled to be completed by December 2008, Phase 3 RGs were to be completed by December 2009, and Phase 4 RGs were those to be completed after December 2009. Phases 3 and 4 RGs are typically those that require a longer time to develop a technical basis, are dependent on related activity such as rulemaking, or technical staff are not available to revise the RG sooner. The staff provides an annual status report on the RG Update Program to the Commission, as directed in the SRM for SECY-07-0208, dated January 10, 2008. The most recent annual report was SECY 10-0037 dated March 25, 2010 (ML100260432).

### Purpose of RGs

NRC uses RGs to inform the public and provide guidance to applicants, licensees, and certificate holders. RGs also identify techniques used to evaluate specific problems or postulated accidents. Using methods, processes, or formats already found acceptable by the staff for meeting the regulations can substantially reduce the time spent on a regulatory activity of interest to either NRC staff or licensees.

RGs are not substitutes for regulations and compliance with them is not required. Licensees, certificate holders, and applicants may propose alternate approaches, although additional staff time may be required for a review of an alternate methodology. Most RGs are publicly available; however, some security RGs are restricted if they contain safeguards information or sensitive unclassified non-safeguards information (SUNSI).

### Summary of RG Development Process

The RG update program is an agencywide process typically involving RES and the five other headquarters program offices, the Office of the General Counsel (OGC), the Advisory Committee on Reactor Safeguards (ACRS), and the Office of Administration (ADM). The first step in developing or revising a guide is to develop the technical basis. This can be accomplished by the program office responsible for the RG, by the RES staff, or by a contractor. The staff uses the technical basis to develop draft RGs (also known as draft guides or DGs) for internal review and concurrence by the appropriate NRC program offices and OGC. Once the internal review is completed, the draft RG is made publicly available in the Agencywide Documents Access and Management System (ADAMS) and a notice is published in the *Federal Register* announcing the availability of the document and requesting public comments. If, in response to the comments received, the original draft RG is substantially changed, it may be issued for a second round of internal review and concurrence. If little or no change is made in response to comments, the RG undergoes a second review by OGC and is then issued as final and announced in the *Federal Register*. The complete process to prepare a draft RG, publish for comment, resolve comments, and publish an approved final RG typically takes more than a year using staff resources.

The ACRS has an opportunity to review the RG both before it is issued as draft for public comment and before it is issued as a final guide. However, the ACRS has waived review of selected DGs when review of the associated final RG is sufficient to meet their interests. RGs of interest to the radiation protection community are provided to the Advisory Committee on the Medical Uses of Isotopes for its review and comment. The Committee for Review of Generic Requirements is also consulted as needed.

#### DISCUSSION:

In the annual status report in SECY 08-0105 dated July 17, 2008 (ML073340245), the staff informed the Commission of delays in the RG update project effort and the reasons for the delays, including changing priorities and revisions in staff resource allocations. The following table summarizes the project status against the schedules committed to in SECY-08-0105.

<b>Schedules in SECY-08-0105</b>	<b>Status as of Dec. 31, 2010</b>
Phase 1 & 2 RGs to be completed by 12/2008	98% Completed*
Withdrawal of identified RGs by 12/2010	100% Completed
Phase 3 & 4 RGs scheduled to be completed after 12/2009	12% Completed

\*Proposed Rev. 2 of RG 5.62 (DG-5019), "Reporting of Safeguards Events" was deferred to align with 10 CFR Part 73 rulemaking.

The following table summarizes the accomplishments of the update project through CY 2010.

<b>Category</b>	<b>RGs in 2010</b>	<b>RGs to date</b>
Revised	21	80
Acceptable as-is	13	15
Withdrawn	14	104
In review and concurrence process (working)	36	-
Deferred since update project initiation	-	115
Still on original schedule	N/A	69
Total RGs (approximate)	84	445

All of the RGs remaining to be reviewed or developed are scheduled according to level of interest from stakeholders, the time required to develop and properly document the revised technical basis, the availability of technical staff to prepare the revision, and coordination with related activities (e.g., rulemaking or standards development). However, agency requirements to support higher-priority tasks and changes in staff resource allocations have resulted in fewer staff resources for RG update work and deferrals of a significant number of RGs. Some of the program offices have supported the RG Update Program by using part-time employees, rehired annuitants, and contractor support to develop RG updates. The time required to develop and issue a final RG with the help of these resources has been about 2 years. As a result, the RG Update Program has extended beyond the originally anticipated completion dates. The RES staff reviews and updates schedules in cooperation with the NRC program offices and appropriate committees at regular intervals to help ensure that available resources are directed to the highest-priority RGs.

In SECY-07-0208, "Proposal for Updating Office of Nuclear Material Safety and Safeguards-Cognizant Regulatory Guides," Nuclear Material Safety and Safeguards (NMSS) staff initially identified 89 NMSS RGs that were candidates for either update or withdrawal. However, as the program has developed, NMSS staff has determined that the final number of RGs to be issued by the end of the RG update program will be less than 89 due to withdrawals of RGs, updates in information, or incorporation of RGs into other RGs. The final number of RGs to be issued has yet to be determined, but NMSS does not foresee any issues that would preclude the staff from completing the updates. As of March 15, 2011, the status of the NMSS RG review program reflects the following:

- 8 RGs have been issued in final (7 related to fuel cycle facilities and 1 related to material control and accountability [10 CFR Part 74])
- 66 RGs are under active development (related to fuel cycle facilities, material control and accountability, transportation, and reprocessing) [*Note*: staff expects this number to be lower as the review/update program continues]
- 5 RGs related to transportation have been withdrawn
- 5 RGs related to transportation have staff determination that a review/update was not necessary
- 5 RGs have been deferred due to technical, policy and/or budget issues (2 related to fuel cycle facilities and 3 related to transportation)

#### Improvements to the RG Development Process

The staff is working to complete an update of all of the RGs identified in 2006. Although many of the RGs have been brought up to date, staff guidance continues to evolve to meet new developments. As a result, a need exists to update the RGs on an ongoing basis to preclude the situation that required the RG update program to be initiated. The staff has begun a new practice to either schedule a default review period of 5 years for each RG after it is revised or reviewed, or to tie the review schedule to known activities such as ASME code case evaluations, the rulemaking schedule, or technical basis standards updates. Progress on this effort will continue to be included in the annual RG status update that is provided to the Commission. The staff's accomplishments with periodic RG reviews are summarized below.

<b>Category</b>	<b>CY10</b>	<b>Program to Date</b>
Newly issued	6	29
Revised since initial update	4	9
Acceptable as-is from Update Project	13	14
Under revision	4	-
<b>Totals</b>	<b>27</b>	<b>42</b>

The staff is also working to clarify how the RGs are used in our regulatory processes. In a letter to OGC dated June 4, 2010 (ML101970353), the Nuclear Energy Institute (NEI) presented the opinion that NRC's publication of RGs is not in full compliance with the agency's stated backfit policy because the NRC does not provide backfit analyses upon issuing interpretive guidance. The NRC responded in a letter dated July 14, 2010 (ML101960180), stating in part that OGC and the staff would examine whether the current backfitting language accompanying the issuance of interpretive guidance should be revised to clarify backfitting positions. The staff and OGC have been working for several months to revise the "Implementation" section of the RGs

currently under review. New language for nuclear power reactor guidance has been developed and included in some new draft RGs to provide a clearer understanding of how NRC plans to use the guidance. The NRC has received additional comments on the redrafted language from NEI. The staff and OGC will continue its activities to develop clear language for the Implementation sections of both nuclear power reactor and materials RGs.

In 2010, RES initiated a new Management Directive, MD 6.6, "Regulatory Guides," to promote better understanding and consistency of the RG development process. The MD is in final approval prior to publishing by the Office of Administration.

#### RESOURCES:

This resource section discusses the funding directed to contractor support to develop the technical basis documents for development of RGs. The program offices use the technical bases to prepare the draft RG that is sent to the Regulatory Guide Development Branch in RES for processing into a final RG.

The average cost for contracted technical support is about \$100K per RG. The RES staff in consultation with the program offices determines the technical bases that can be developed by the staff and which bases need contractor support. To date, 92 RGs have been identified as requiring contractor support, and approximately half of these have been funded. The staff has not yet issued statements of work or task orders for the development of the technical basis documents for the remainder of the RGs for various scheduling reasons. In a memorandum to the Chairman dated November 2, 2009 (ML090620075), the RES staff requested approval to initiate a new commercial contract and identified revised costs and additional resources required to support scheduled RG revisions for the time period FY 2010–FY 2014. The Chairman approved the new procurement in a memorandum dated December 2, 2009 (ML093441233), and the contract was awarded on January 3, 2011.

RES included \$650K in the FY 2011 President's Budget to complete funding of the existing technical support contract until December 2011. In addition, RES included \$1.56 million in the FY 2011 budget and \$850K in the FY 2012 budget for the new technical support contract. Additional resources (if needed) will be addressed during the FY 2013 – FY 2015 Planning, Budgeting, and Performance Management process.

#### COORDINATION:

OGC reviewed this Commission paper and has no legal objection. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

**/RA/**

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**ADAMS Accession No.: ML103430552**

**WITS200800100/EDATS: SECY-2010-0180**

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