

NUCLEAR REGULATORY COMMISSION

[NRC-2013-0211]

**Interim Staff Guidance Specific Environmental Guidance
for Integral Pressurized Water Reactors Reviews**

AGENCY: Nuclear Regulatory Commission

ACTION: Draft Interim Staff Guidance; request for comment.

SUMMARY: The U.S Nuclear Regulatory Commission (NRC) staff is issuing for use of, and to solicit public comment on, draft Interim Staff Guidance (ISG) ESP/COL-ISG-027, “Interim Staff Guidance Specific Environmental Guidance for iPWR Reviews.” The purpose of this ISG is to clarify the NRC guidance and application of NUREG-1555, “Environmental Standard Review Plan: “Standard Review Plans for Environmental Reviews for Nuclear Power Plants,” to environmental reviews for applications for licenses to construct and operate integral pressurized water reactors (iPWR). This guidance applies to environmental reviews associated with iPWR applications for limited work authorizations, construction permits, operating licenses, early site permits (ESPs), and combined licenses (COLs).

DATES: Submit comments by **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION]**.

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 comments 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-2013-0211**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3442; e-mail: 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-06-44M, 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: Mr. Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone at 301-415-6992 or e-mail at Jonathan.DeGange@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID **NRC-2013-0211** when contacting the NRC about the availability of information regarding this document. You may access publicly-available

information related to this document by any of the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2013-0211**.

- **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 e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. Interim Staff Guidance for iPWR, ISG-027, can be found at ADAMS Accession No. ML12342A228

- **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 agency posts its issued staff guidance in the agency external Web page <http://www.nrc.gov/reading-rm/doc-collections/isg>.

B. Submitting Comments

Please include Docket ID **NRC-2013-0211** 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 you comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter 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.

The NRC staff issues ESP/COL-ISGs to facilitate timely implementation of current staff guidance and to facilitate activities associated with review of applications for ESPs, design certifications, and COLs by the Office of New Reactors. The NRC staff intends to incorporate the final approved ESP/COL-ISG-027 into the next revision of the Environmental Standard Review Plan and related guidance documents.

BACKFITTING AND ISSUE FINALITY:

The guidance in draft ISG-027 would clarify how the NRC would apply the guidance in the Environmental Standard Review Plan (ESRP) to environmental reviews for applications for COL and ESP applicants that reference iPWR designs. Issuance of this draft ISG, if finalized, would not constitute backfitting as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.109 (the Backfit Rule), or which should be regarded as backfitting under Commission and Executive Director for Operations guidance, and would not 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 ISG positions, if finalized, do not constitute backfitting, inasmuch as the ESRP is internal guidance to NRC staff.*

The ISG 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 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 do not – with limited exceptions not applicable here – protect current or future applicants.*

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 apply 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 ISG 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 ISG section (if finalized) in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described applicable issue finality provision.

CONGRESSIONAL REVIEW ACT:

This ISG 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 5th day of September 2013.

For the Nuclear Regulatory Commission.

/RA/

Joseph Colaccino, Chief
Policy Branch
Division of Advanced Reactor and Rulemaking
Office of New Reactors