

**Response to Public Comments on Draft Regulatory Guide (DG)-5036  
 “Fitness-for-Duty [FFD] Programs at New Reactor  
 Construction Sites.”  
 Proposed Revision 0 of Regulatory Guide (RG) 5.84**

On November 28, 2014, the NRC published a notice in the *Federal Register* (79 FR 70898) that Draft Regulatory Guide, DG-5036 (Proposed Revision 0 of RG 5.84), was available for public comment. The Public Comment period ended on January 27, 2015. The NRC received comments from the organizations listed below. The NRC has combined the comments and NRC staff responses in the following table.

Two comments were received from Robert Lysle whose affiliation and address was not provided.

Robert Lysle N/A ADAMS Accession No. ML14345A749	Robert Lysle N/A ADAMS Accession No. ML14357A062
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Commenter	Section of DG-5036	Specific Comments	NRC Resolution
Robert Lysle	General	<p>Dec. 23, 2014            This draft guide proposes to endorse the use of a process developed by the Nuclear Energy Institute, NEI 06-06, without providing the subject document, specifically, NEI 06-06. The NRC needs to: 1) provide the NEI document that this guide proposes to endorse so that the public can see what the NRC is proposing to endorse, and 2) extend the comment period because the NEI document has not been provided.</p> <p>January 7, 2015            How can the NRC expect a person to comment on this draft guide without having the ability to see the NEI document that it purports to endorse, which is described as NEI 06-06,(NEI) 06-06, Fitness-for-</p>	<p>The NRC disagrees with this comment. The <i>Federal Register</i> notice published on November 28, 2014, which requested comments from the public on the draft regulatory guide, DG-5036, explained how to obtain a copy of NEI 06-06, Revision 6. DG-5036 also informed the public that NEI 06-06, Revision 6, was available on the NRC’s Agencywide Documents Access and Management System (ADAMS). The NEI document was added to the Regulations.gov docket site on December 23, 2014, to facilitate the public’s ability to provide comments.</p>

Commenter	Section of DG-5036	Specific Comments	NRC Resolution
		Duty Program Guidance for New Nuclear Power Plant Construction Sites, Revision 6, dated April 2013? There are no supporting documents in this folder.	
	Discussion	<p>"If a secondary reference has itself been incorporated by reference into NRC regulations as a requirement, then licensees and applicants must comply with that standard as set forth in the regulation."</p> <p>What is the difference between a standard and a regulation, and to which must a licensee comply? What does this really mean? Must licensees and applicants comply with standards, or regulations, or both, and if both, then what is the distinction between them?</p>	<p>Taken in the context of DG-5036, the "standard as set forth in the regulation" refers to a standard, developed by an organization external to the NRC, that has been incorporated by reference into the NRC's regulations. An example of this is 10 CFR 50.55a, in which the NRC has incorporated by reference portions of the American Society of Mechanical Engineers Code.</p> <p>A licensee must comply with applicable regulations. If a regulation includes a standard, then, in general, compliance with the regulation inherently requires compliance with the standard.</p>
	Staff regulatory Guidance	<p>"Although examples are appropriate as general templates for illustrating and reinforcing the guidance in NEI 06-06 and associated regulatory guidance, the NRC endorsement of NEI 06-06 should not be considered a determination that each NEI 06-06 example applies to any or all licensees, applicants, or other entities as presented and written in NEI 06-06 or this regulatory guide. A licensee should ensure that any example provided applies to its particular circumstance before implementation."</p> <p>What does this mean? What is, and where is the "associated regulatory guidance"? Why has this not been included in the references section?</p>	<p>The NRC makes guidance available, in part, to foster between the NRC and the public a better understanding of the NRC's regulations. Templates or examples are often used in guidance documents to help advance that understanding, but they cannot address all possible scenarios regarding, for instance, implementing regulations. The caveat "associated regulatory guidance" does not refer to specific guidance documents and is used as part of the larger reminder to licensees that they are responsible for assuring correct implementation of a given regulation.</p>

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	Implementation	<p>"The purpose of this section is to provide information on how applicants and licensees may use this guide and information regarding the NRCs plans for using this regulatory guide."</p> <p>Inasmuch as this section does NOT provide information on how applicants and licensees may use this guide, what does this mean?</p>	<p>The NRC disagrees with the comment that the Implementation section does not provide information on how applicants and licensees may use the guide. Under the heading, "Use by Licensees and Applicants," the first sentence explains that applicants and licensees may use the guidance in the regulatory guide to demonstrate compliance with the underlying NRC regulations (i.e., 10 CFR Part 26, Subpart K). The second paragraph provides additional examples of how a licensee could use the regulatory guide, such as in making changes under 10 CFR 50.59. Furthermore, because the intent of this guide is to inform the public that the NRC staff has found NEI 06-06, Revision 6, to be an acceptable method for meeting the Commission's regulations, with the exception that is identified in the Staff Regulatory Guidance section, licensees' use of the guidance in the regulatory guide includes use of NEI 06-06, Revision 6 (with the one noted exception).</p>