

NUCLEAR REGULATORY COMMISSION

[NRC-2012-0314; NRC-2013-0149; NRC-2014-0099; NRC-2014-0101]

Conduct of Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing final revisions to Section 13.6.4, "Access Authorization—Operational Program;" Section 13.7, "Fitness-for-Duty;" Section 13.7.1, "Fitness-for-Duty—Operational Program;" Section 13.7.2, "Fitness for Duty—Construction;" and Section 13.6.3, "Physical Security—Operational Program – Early Site Permits and Reactor Siting Criteria;" of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition."

DATES: The effective date of these SRP section revisions is November 14, 2016.

ADDRESSES: Please refer to Docket IDs NRC-2012-0314 for SRP Section 13.6.4, NRC-2013-0149 for SRP Sections 13.7 and 13.7.1, NRC-2014-0099 for SRP Section 13.7.2, and NRC-2014-0101 for SRP Section 13.6.3 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket IDs NRC-2012-0314 (for SRP Section 13.6.4), NRC-2013-0149 (for SRP Sections 13.7

and 13.7.1), NRC-2014-0099 (for SRP Section 13.7.2), and NRC-2014-0101 (for SRP Section 13.6.3). Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):**

You may obtain publicly-available documents online in the ADAMS Public Documents collection 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. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the “Availability of Documents” section of this document. The NUREG-0800 is available on the NRC’s public website at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>.

- **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.

FOR FURTHER INFORMATION CONTACT: Mark Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3053; e-mail: Mark.Notich@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 2012 (77 FR 77117), the NRC published for public comment the proposed revision to Section 13.6.4, “Access Authorization—Operational Program” (ADAMS Accession No. ML12125A098). On July 16, 2013 (78 FR 42558), the NRC published for public comment the proposed revision to Section 13.7, “Fitness-for-Duty;” and Section 13.7.1, “Fitness-for-Duty—Operational Program” (ADAMS Accession Nos. ML113250516 and ML113250541, respectively). On May 5, 2014 (79 FR 25627), the NRC published for public comment the proposed revision to Section 13.6.3, “Physical Security – Early Site Permit and Reactor Siting Criteria” (ADAMS Accession No. ML13059A367). Also on May 5, 2014 (79 FR 25628), the NRC published for public comment the proposed revision to Section 13.7.2, “Fitness-for-Duty- Construction” (ADAMS Accession No. ML113270035).

The NRC staff received comments on the proposed revision to SRP Section 13.6.4. A summary of the comments and the NRC staff’s disposition of the comments are available in a separate document entitled, “Response to Public Comments on Draft Standard Review Plan (SRP) 13.6.4: Access Authorization – Operational Program” (ADAMS Accession No. ML13270A111). Therefore, the NRC is issuing this revised section of the SRP in final form for use.

The NRC did not receive comments on the proposed revisions to SRP Sections 13.6.3, 13.7, 13.7.1, and 13.7.2. Therefore, the NRC is issuing these revised sections of the SRP in final form for use.

There have been minor editorial changes to these sections since their issuance in proposed form for public comment. Details on the specific changes are included in the redline strikeout documents referenced in Section IV, “Availability of Documents,” of this document.

II. Backfitting and Issue Finality

Issuance of these revised SRP sections does not constitute backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), “Backfitting,” (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 SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.*

The SRP provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal NRC 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 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 NRC staff does not intend to impose or apply the positions described in the SRP to existing (already issued) licenses and regulatory approvals. Therefore, the issuance of a final SRP - even if considered guidance that 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 NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner which 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— with limited exceptions not applicable here —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 in the next paragraph - were intended to apply 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 NRC staff does not currently intend to impose the positions represented in these SRP sections 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 in a manner which 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.

III. Congressional Review Act

These SRP section revisions are 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.

IV. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

SRP Section	Final Revision ADAMS Accession Number	Current Draft Revision ADAMS Accession Number	Redline Strikeout ADAMS Accession Number
13.6.3	ML15061A471	ML13059A367	ML15226A059
13.6.4	ML15226A009	ML12125A098	ML15111A201
13.7	ML15111A091	ML113250516	ML15111A057
13.7.1	ML15111A036	ML113250541	ML15226A098
13.7.2	ML15111A034	ML113270035	ML15226A168

Dated at Rockville, Maryland, this 6th day of October 2016.

For the Nuclear Regulatory Commission.

/RA/

Joseph Colaccino, Chief,
New Reactor Rulemaking and Guidance Branch,
Division of Engineering, Infrastructure, and
Advanced Reactors,
Office of New Reactors.