



U.S. Nuclear Regulatory Commission
Office of Nuclear Reactor Regulation

NRR OFFICE INSTRUCTION

Change Notice

Office Instruction No.: LIC-105, Revision 6

Office Instruction Title: Managing Regulatory Commitments Made by Licensees to the NRC

Effective Date: June 13, 2016

Approved By: Susan Abraham

Date Approved: June 8, 2016

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Responsible Organization: NRR/DORL

Summary of Changes: Revision 6 removes Regulatory Commitment Audits per Staff Requirements Memorandum (SRM) SECY-16-0009, "Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities," dated April 13, 2016.

Training: E-mail announcement

ADAMS Accession No. ML16119A302



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NRR OFFICE INSTRUCTION
LIC-105, Revision 6
Managing Regulatory Commitments Made by Licensees to the NRC

1. POLICY

Although the terms “regulatory commitment” and “licensing bases” are not used in Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, they are nevertheless used frequently in the context of interactions between the U.S. Nuclear Regulatory Commission (NRC or the Commission) and licensees for commercial nuclear reactors. The terminology was reflected in 10 CFR Part 54, “Requirements for Renewal of Operating Licenses for Nuclear Power Plants,” in the definition of “current licensing bases” (see 10 CFR Section 54.3). Additional information about the attributes of various elements of the licensing bases for operating reactors can be found in NRR Office Instruction LIC-100, “Control of the Licensing Bases for Operating Reactors.”

The policy considerations concerning the use of regulatory commitments can be found in the following Commission papers:

- SECY-95-300, Nuclear Energy Institute’s (NEI) Guidance Document, “Guideline for Managing NRC Commitments,” dated December 20, 1995 (Ref. 1)
- SECY-98-224, “Staff and Industry Activities Pertaining to the Management of Commitments Made by Power Reactor Licensees to the NRC,” dated September 28, 1998 (Ref. 2)
- SECY-00-045, “Acceptance of NEI 99-04, ‘Guidelines for Managing NRC Commitments’,” dated February 22, 2000 (Ref. 3)

As described in SECY-00-045, the NRC staff found that the Nuclear Energy Institute document, NEI 99-04, “Guidelines for Managing NRC Commitment Changes” (Ref. 4), contains acceptable guidance for controlling regulatory commitments made by power reactor licensees to the NRC.

Issues concerning the use of regulatory commitments usually center on the legal standing of the commitment and the NRC staff’s ability to enforce the action committed to by a licensee. The staff determined that keeping regulatory commitments as an element of licensing basis information should continue because, when handled properly, the commitments support the overall licensing process by adding flexibility, improving efficiency, and maintaining the flow of information between the staff and licensees. These advantages usually outweigh concerns that a licensee is not “legally bound” to fulfill and subsequently control an action appropriately classified as a regulatory commitment. Various assessments performed by the NRC staff supported this view. See, for example, the “Assessment of Regulatory Processes that Utilize Regulatory Commitments,” dated November 26, 2008 (Ref. 5).

2. **OBJECTIVES**

This office instruction provides NRR staff guidance on managing regulatory commitments. The guidance is consistent with available industry guidance and is intended to ensure common understanding (by the staff, licensees, and other agency stakeholders) of the handling of regulatory commitments. Specific objectives include the following:

- Ensure the protection of public health and safety and the environment, and the secure use and management of radioactive materials, by the effective use of the NRC's regulatory processes, including the appropriate use of regulatory commitments made by power reactor licensees.
- Ensure effectiveness, efficiency, and timeliness in licensing actions by establishing a common understanding of the control of regulatory commitments.
- Ensure openness of the licensing process by establishing a common reference for processes, communications, and decisionmaking involving regulatory commitments.

3. **BACKGROUND**

Various activities undertaken by the staff and the nuclear industry in the early 1990s culminated in the issuance of SECY-95-300, which contained the NEI guidelines for managing NRC commitments. The industry document and related Commission paper contained guidance for handling licensing basis information that was not subject to controls defined in NRC regulations. The NEI guidance describes a process that licensees can use to modify or delete regulatory commitments and provides criteria to decide if and when changes to regulatory commitments should be reported to the NRC. The use of this guidance was intended to clarify the standing of regulatory commitments and give licensees the confidence and flexibility to modify or delete regulatory commitments shown to be inefficient or ineffective.

In SECY-98-224, the staff described its activities related to commitment management strategies, audits of commitment management programs at power reactor facilities, and discussions with stakeholders. In SECY-98-224, the staff also: (1) discussed its rationale for maintaining regulatory commitments as an element of the licensing bases for power reactors, and (2) described the expected management of regulatory commitments by licensee administrative processes and the proposed internal guidance for the NRC staff. Following the plan described in SECY-98-224, the staff worked with NEI and licensees as they revised the industry guidance document. These efforts were reflected, along with the insights from participating licensees, in the development of NEI 99-04.

The staff's review of NEI 99-04, including its finding that the revised guidance remained useful for controlling regulatory commitments, is described in SECY-00-045 and in the letter from S. Collins (NRC) to R. Beedle (NEI) dated March 31, 2000 (Ref. 6). In

Regulatory Issue Summary 2000-17, "Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff" (Ref. 7), the NRC informed licensees that NEI 99-04 contains acceptable guidance for controlling regulatory commitments and encouraged licensees to use the NEI guidance, or similar administrative controls, to ensure that regulatory commitments are implemented and that changes to the regulatory commitments are evaluated and, when appropriate, reported to the NRC.

LIC-105 was issued in May 2003 to provide specific guidance to the NRC staff regarding the appropriate use of regulatory commitments and the conduct of commitment management audits. It has been revised, subsequently, to incorporate feedback from auditors and lessons learned from effectiveness and efficiency assessments in 2008, 2009, and 2011.

An Office of Inspector General (OIG) Audit Report (OIG-11-A-17), "Audit of NRC's Management of Licensee Commitments," was completed on September 19, 2011 (Ref. 9). OIG identified that the definition and use of commitments were not consistently understood throughout the NRC. As a result, the OIG audit determined that the NRC staff may have accepted licensee-proposed commitments rather than the necessary regulatory requirement or obligation, such as a license condition, order, rule, or regulation. This is especially true of older commitments that were established in the years before NEI 99-04 was developed and endorsed by the NRC. The guidance in NEI 99-04 recognizes this possibility and provides guidelines in Section 4.2 to assess items that were previously implemented as commitments but were in fact obligations. NEI 99-04, Step 3 of Section 4.2 notes that methods used by licensees to ensure compliance with obligations will not normally be considered commitments.

A LIC-105 revision in 2016 was completed to remove the triennial Regulatory Commitment Audit requirement consistent with SRM-SECY-16-0009, "Recommendations Resulting from the Integrated Prioritization and Re-baselining of Agency Activities."

4. BASIC REQUIREMENTS

The basic requirements for NRR's management of regulatory commitments made by power reactor licensees can be divided into two major areas:

- (1) Routine creation of regulatory commitments by the licensees as part of the processes associated with various licensing tasks.
- (2) NRC handling of commitment changes that are reported to the NRC in accordance with licensees' administrative procedures.

These areas are described below.

4.1 Creation of Regulatory Commitments

Regulatory commitments are appropriate for matters that are of significant interest to the staff but do not warrant either legally binding requirements or inclusion in updated final

safety analysis reports (UFSARs) or programs subject to a formal regulatory change control mechanism. Nevertheless, the regulatory process appropriately utilizes commitments in many instances, and the NRC expects licensees to honor these commitments in good faith.

Because regulatory commitments are implemented by the licensee, the licensee is responsible for creating and maintaining configuration control of all regulatory commitments made to the NRC. Control of such commitments, in accordance with licensee programs, is acceptable, provided those programs include controls for evaluating changes and, when appropriate, reporting them to the NRC.

All regulatory commitments made by the licensee to the NRR staff are to be docketed in formal correspondence from the licensee. The NRR staff should not include any statements regarding regulatory commitments made by the licensee in safety evaluations (SEs) or other NRC documentation unless those commitments were expressly made by the licensee in writing. In some cases, licensees may choose to allow a third party (e.g., an owners group or NEI) to work with the NRC staff on their behalf to resolve generic issues or issues germane to a vendor type. Licensees and the NRC staff should ensure that regulatory commitments related to third party submittals are well understood and documented (i.e., the submittal should state that the group is authorized to make the regulatory commitment on behalf of the licensees, or each licensee should separately submit a regulatory commitment related to the generic document).¹

A frequently asked question is when to accept an action to be completed by a licensee as a regulatory commitment versus making the action a license condition, another regulatory requirement, or incorporating the action into a mandated licensing basis document such as the UFSAR. As described in LIC-100, "Control of Licensing Bases for Operating Reactors," the inclusion of actions or programs into the operating license, including technical specifications and license conditions, creates an obligation or regulatory requirement upon the licensee. This should only be used if the staff deems that the commitment is essential for ensuring the health and safety of the public. Such obligations include actions that form the basis for the NRC staff's reasonable assurance finding on a licensing action. LIC-100 defines obligations as follows:

Conditions or actions that are legally binding requirements imposed on licensees through applicable rules, regulations, orders, and licenses (including technical specifications and license conditions). The imposition of obligations (sometimes referred to as regulatory requirements) during routine interactions with licensees should be reserved for matters that satisfy the criteria of 10 CFR 50.36 or are otherwise found to be of high safety or regulatory significance. The major distinction between obligations and other parts of the licensing bases is that changes generally cannot be made without prior NRC approval.

¹ This item was added in response to Davis-Besse Lessons Learned Task Force (LLTF) Recommendation, LLTF No. 3.1.2(2), which states that NRC should establish review guidance for accepting owners group and industry resolutions for generic communications and generic issues. Such guidance should include provisions for verifying implementation of activities performed by individual owners groups and licensees.

Since commitments made by a licensee in support of a license action, such as a license amendment request, are not legally binding, the staff's SE should not rely on commitments as a basis for any part of the staff's approval of a proposed licensing action. Therefore, if the NRC staff needs to rely on a regulatory commitment in an SE, the staff must escalate the commitment to an obligation or incorporate it into a mandated licensing basis document.

4.2 Handling of Licensee Reported Changes to Regulatory Commitments

Licensees using the industry guidance in NEI 99-04 will periodically report changes in commitments they have made using their administrative processes. NEI 99-04 guidance also includes criteria to determine if a more immediate report to the NRC staff is appropriate. Upon receipt of a report of multiple changes, or a letter on a change to a specific regulatory commitment, the project manager (PM) should perform a brief assessment to determine if additional reviews and/or interactions with the licensee are warranted. If the brief review identifies safety concerns, followup with the appropriate technical staff and interfacing with the licensee is necessary to resolve the concerns. For changes to implementation dates of previous regulatory commitments, consult with appropriate technical staff or the lead PM for generic communications to determine if the changes are acceptable. The formality of the staff's response will depend upon the circumstances and can vary from a telephone call acknowledging a revised commitment date to a formal letter. If a formal letter is not issued, the PM should document other contacts (e.g., phone call or e-mail) and the staff's conclusions in a memo to file. The Division of Operating Reactor Licensing (DORL) Technical Assistant (TA) should be copied on closeout documentation.

4.2.1 Regulatory Commitments Within the License Renewal Process

The Division of License Renewal (DLR) accepts regulatory commitments made by the licensee during the course of a license renewal application review. These commitments are captured in the license renewal SE report that is issued as an NRC technical report (NUREG). Many of the commitments for license renewal are no longer commitments since they are subsequently incorporated into the plant's UFSAR or reconstituted as license conditions.

The regional inspectors verify completion of commitments (including those that have been escalated) for license renewal using Inspection Procedure IP 71003, "Post-Approval Site Inspection for License Renewal" (ADAMS Accession No. ML082830294). Therefore, DORL PMs will typically not include these commitments in the triennial commitment audit sample. However, if there are a limited number of commitments initiated by a licensee since the last triennial commitment audit, the DORL PM should consider adding more commitments from license renewal to the triennial commitment audit sample population.

The criteria for assessing commitment changes provided in NEI 99-04 (see Enclosure 3 of this office instruction) may also apply to licensee modifications to commitments for license renewal. However, a majority of the commitments associated with license renewal are incorporated as part of the UFSAR

supplement and, therefore, managed in accordance with the requirements of 10 CFR 50.59. In a few cases, commitments associated with license renewal were referenced in the license conditions for license renewal but not incorporated as part of the UFSAR. As a result, these commitments were elevated to legal obligations via the license conditions.

Modification of actions that have been elevated from commitments to license conditions can only be accomplished through NRC approval of a license amendment, since they are no longer commitments but have been reconstituted as regulatory obligations. However, these elevated actions have historically continued to be incorrectly referred to as commitments in various NRC documents, including the associated license renewal safety evaluation reports that are issued as NUREGs. Therefore, DORL PMs should exercise caution when reviewing licensee changes to commitments for license renewal and ensure that: (1) modifications to commitments are made in accordance with the change process described in NEI 99-04, (2) modifications to commitments incorporated in the UFSAR are made in accordance with 10 CFR 50.59, and (3) modifications to actions that have been elevated to obligations are made in accordance with 10 CFR 50.90.

4.3 Periodic Reviews

The triennial audit of the licensee's regulatory commitments has been eliminated consistent with SECY-SRM-16-0009, "Recommendations Resulting from the Integrated Prioritization and Re-baselining of Agency Activities."

5. RESPONSIBILITIES AND AUTHORITIES

All NRR staff supporting the formation or revision of the licensing bases for commercial nuclear reactors are responsible for reading, understanding, and applying the guidance in this office instruction. They also are responsible for identifying possible improvements to the guidance and submitting suggestions for such improvements to their management or to the assigned contacts for this office instruction. The following paragraphs describe these responsibilities in greater detail.

5.1 Division Directors

Division directors routinely ensure that their organizations are properly carrying out the overall licensing program for commercial nuclear reactors, including the use of regulatory commitments. Division directors are responsible for ensuring that their organizations resolve technical issues, develop approaches, and take actions to meet the objectives established in the operating plan. Division directors will escalate proposed solutions to problems and proposed process improvements to the Executive Team when circumstances require the involvement of senior managers.

5.2 Branch Chiefs

Branch chiefs (BCs) are responsible for ensuring that staff are appropriately trained, provided with necessary tools, and appropriately managed during their reviews of specific licensing actions or other licensing tasks.

In limited cases, the DORL BC may request that the regional office verify completion of certain regulatory commitments or other key information used in the review of a licensing action. If necessary, the DORL BC will request support from the appropriate regional office. The request will identify the information to be verified, whether there is a need to document the verification (in a memorandum or inspection report), and a proposed schedule. Refer to NRC IP 71005, "Inspector Review of Licensing-related Information" (ADAMS Accession No. ML032190054).

DORL BCs will review significant safety issues or any potential notice of deviation (NOD) discovered during the audit and take appropriate action as discussed in Section 4.3.3 of this office instruction.

5.3 Project Managers

Project managers (PMs) are responsible for the general oversight and coordination of NRR activities related to the processing of licensing actions, generic issues, or policy issues, and for ensuring that the outputs associated with these licensing activities are complete, accurate, and timely. Because PMs serve as the primary contact between NRR and licensees, PMs have the responsibility of ensuring that communications between the staff and licensees facilitate mutual understanding of any regulatory commitments that a licensee makes.

NRR PMs are required to complete the iLearn Training Course "Proper Use of Regulatory Commitments Made by Licensees to the NRC" (Course ID 35143) every 2 years.

5.4 Technical Staff

The technical staff will ensure that regulatory commitments used in SE inputs are properly characterized. Specifically, technical staff will ensure that actions proposed by licensees as regulatory commitments, which form the basis for a finding of public health and safety, are appropriately elevated to legal obligations as discussed in Section 4.1 of this office instruction.

NRR technical staff are required to complete the iLearn Training Course "Proper Use of Regulatory Commitments Made by Licensees to the NRC" (Course ID 35143). This is a one-time requirement only.

5.5 Lead Project Managers for Multi-Plant Actions

As described in LIC-503, "Generic Communications Affecting Nuclear Reactor Licensees," lead PMs for multi-plant actions are responsible for assessing the need for

long-term verification of licensee actions in response to generic communications, which can be accomplished through the PM audits.

6. PERFORMANCE MEASURES

No performance measures are proposed beyond those related to the NRR Operating Plan.

7. PRIMARY CONTACTS

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8. RESPONSIBLE ORGANIZATION

NRR/DORL

9. EFFECTIVE DATE

June 13, 2016

10. REFERENCES

1. SECY-95-300, Nuclear Energy Institute's Guidance Document, "Guideline for Managing NRC Commitments," dated December 20, 1995 (ADAMS Accession No. ML060270189).
2. SECY-98-224, "Staff and Industry Activities Pertaining to the Management of Commitments Made by Power Reactor Licensees to the NRC," dated September 28, 1998 (ADAMS Accession No. ML992870043).
3. SECY-00-045, "Acceptance of NEI 99-04, 'Guidelines for Managing NRC Commitments'," dated February 22, 2000 (ADAMS Accession No. ML003679799).
4. NEI 99-04, "Guidelines for Managing NRC Commitment Changes," July 1999 (ADAMS Accession No. ML003680088).
5. Memorandum from J. Giitter (NRC) to B. Boger (NRC) dated November 26, 2008 (ADAMS Accession No. ML083150618).
6. Letter from S. Collins (NRC) to R. Beedle (NEI) dated March 31, 2000 (ADAMS Accession No. ML003696998).

7. Regulatory Issue Summary 2000-17, "Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff," dated September 21, 2000 (ADAMS Accession No. ML003741774).
8. NRR Office Instruction LIC-111, "Regulatory Audits," dated December 16, 2008 (ADAMS Accession No. ML082900195).
9. Memorandum from S. Dingbaum (OIG) to W. Borchardt (NRC) dated September 19, 2011 (ADAMS Accession No. ML112620529).
10. "Nuclear Regulatory Enforcement Manual," Revision 8, February 1, 2013 (ADAMS Accession No. ML102630150).
11. Memorandum from M. Galloway (NRR/DLR) to M. Evans (NRR/DORL) dated February 27, 2012 (ADAMS Accession No. ML12027A026).
12. NRR Office Instruction LIC-101, "License Amendment Review Procedures," Revision 4, dated May 22, 2012 (ADAMS Accession No. ML113200053).
13. Staff Requirements Memorandum (SRM) - SECY-16-0009, "Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities," dated April 13, 2016 (ADAMS Accession No. ML16104A158).

Enclosure
Appendix A: Change History

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Office Instruction LIC-105
Managing Regulatory Commitments Made By Licensees to the NRC

LIC-105 Change History - Page 1 of 2			
Date	Description of Changes	Method Used to Announce and Distribute	Training
05/27/2003	The objective of this office instruction is to provide NRR staff and their stakeholders with a common reference for handling regulatory commitments made by licensees to the NRC staff. The guidance in this office letter is consistent with the industry guidance prepared by the Nuclear Energy Institute (NEI) NEI 99-04, "Guidelines for Managing NRC Commitment Changes."	E-mail to NRR staff	E-mail announcement with recommended self-study for all staff. Specific training session for project managers (training as needed prior to specific audits).
09/07/2004	Changes in Revision 1 include: (1) discussion of regulatory commitments related to activities of industry groups [to address open item from Davis Besse LLTF], and (2) minor changes to audit procedure to reflect lessons learned from recent audits.	E-mail to NRR staff	E-mail announcement with recommended self-study for all staff. Specific training session for project managers during routine DLPM division meeting.
06/02/2008	Changes in Revision 2 include: (1) incorporation of additional details on performing audits that previously were located in a separate guide, (2) incorporation of feedback and best practices from completed audits, (3) changes to the objectives section to reflect the current NRC strategic plan, (4) changes to the responsibilities section and other locations to reflect the current NRR organization, and (5) miscellaneous minor changes and edits.	E-mail to NRR staff	E-mail announcement with recommended self-study for all staff.

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Date	Description of Changes	Method Used to Announce & Distribute	Training
09/10/12	Revision 4 incorporates enhancements in response to the Office of Inspector General (OIG) Audit Report OIG-11-A-17. Changes in Revision 4 include: (1) incorporation of additional guidance on commitment audit sample selection, (2) incorporation of additional guidance on commitment implementation verification, (3) incorporation of new guidance on identifying misapplied commitments, (4) incorporation of additional guidance on reviewing licensees' commitment management programs, (5) incorporation of additional guidance on reviewing commitment modifications, and (6) miscellaneous changes and edits.	E-mail to NRR staff	Training presentations to DORL, DLR, and regional staff. In addition, commitment management briefings provided to DORL PMs.
09/05/13	Revision 5 updates Section 4.3 and the audit report template in Enclosure 4, with the requirement for DORL PMs to open a not fee billable technical assignment code (TAC) to track final disposition of an identified misapplied commitment that requires actions to be completed after the audit report is issued. Minor editorial corrections were also made.	E-mail to NRR staff	E-mail announcement with recommended self-study for all staff.
06/08/16	Revision 6 removes Regulatory Commitment Audits per Staff Requirements Memorandum (SRM) SECY-16-0009, "Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities," dated April 13, 2016.	E-mail to NRR staff	E-mail announcement