

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0045]

Steam Generator Materials and Design

AGENCY: Nuclear Regulatory Commission.

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

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 5.4.2.1, "Steam Generator Materials and Design," of NUREG-0800, "Standard Review Plan [SRP] for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light Water Reactor] Edition." Revision 4 to Section 5.4.2.1 of the SRP reflects current NRC review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this section.

DATES: The effective date of Revision 4 to Section 5.4.2.1 of the SRP is September 2, 2016.

ADDRESSES: Please refer to Docket ID NRC-2016-0045 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 ID NRC-2016-0045. 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. A mark-up showing the Revision 4 changes made to SRP Section 5.4.2.1, and the final revision of SRP Section 5.4.2.1, Revision 4, are available in ADAMS under Accession Nos. ML16147A298 and ML16147A289.

- **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 NUREG-0800 is available on the NRC's public Web site at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/>.

FOR FURTHER INFORMATION CONTACT: Carolyn Lauron, telephone: 301-415-2736, e-mail: Carolyn.Lauron@nrc.gov; or Mark Notich, telephone: 301-415.3053, e-mail: Mark.Notich@nrc.gov. Both are staff of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On April 22, 2016 (81 FR 23762), the NRC published for public comment the proposed revisions to SRP Section 5.4.2.1. The NRC received no comments on the proposed revisions. Therefore, the NRC is issuing Revision 4 to Section 5.4.2.1 of the SRP in final form for use. There have been minor editorial changes to this section since its issuance in proposed form for public comment. Details of the specific changes are included at the end of the revised section, under the subsection titled, "Description of Changes."

Revision 4 to Section 5.4.2.1 of the SRP reflects current NRC review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this section.

II. Backfitting and Finality Provisions

Issuance of this revised SRP section 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 the NRC's 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 current licensees and regulatory approvals either now or in the future.*

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 do not – with limited exceptions not applicable here – 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, at this time, intend to impose the positions represented in the SRP 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

This SRP section revision 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 28th day of July 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.

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***via e-mail**

ADM-012

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[NRC-2016-0045]

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