

NUCLEAR REGULATORY COMMISSION

[NRC-2016-0126]

Physical Security Hardware – Inspections, Tests, Analyses, and Acceptance Criteria

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 14.3.12, “Physical Security Hardware – Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC),” of NUREG-0800, “Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.”

DATES: The effective date of this SRP update is June 23, 2017.

ADDRESSES: Please refer to Docket ID **NRC-2016-0126** 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-2016-0126**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual 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 notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final revision, previously issued draft revision for public use and comment, and redline strikeout comparing final revision with draft revision are available in ADAMS under the following Accession Nos.: ML16320A125, ML16032A050, and ML16342B303, respectively.

- **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 July 13, 2016 (81 FR 45312), the NRC published for public comment a proposed revision of Section 14.3.12, “Physical Security Hardware – Inspections, Tests, Analyses, and Acceptance Criteria,” of NUREG-0800, “Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.” The public comment period closed on August 12, 2016. A summary of comments received and the staff’s disposition of the comments are available in a separate document, “Response to Public Comments on Draft Standard Review Plan, Section 14.3.12, “Physical Security Hardware – Inspections, Tests, Analyses, and Acceptance Criteria,” (ADAMS Accession No. ML16320A193). Subsequent to revising the text of SRP Section 14.3.12 to address public comments, the staff made an editorial change to the introductory paragraph on page 1 of this SRP Section. This edit did not change the staff’s approach to reviewing physical security information in licensing applications.

II. Backfitting and Issue Finality

Chapter 14 of the SRP provides guidance to the staff for initial test program and ITAAC-design certification under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). Section 14.3.12 of the SRP provides guidance for reviewing an application for an early site permit, a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52 with respect to systems associated with physical security.

Issuance of this SRP section revision does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it 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 would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC 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. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing licenses and regulatory approvals. Hence, the issuance of this SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—does not need to 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 that does not provide issue finality as described in the applicable issue finality provision, then the 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. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that 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) 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 staff seeks to impose a position in the SRP section in a manner that 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 in the applicable issue finality provision.

III. Congressional Review Act

This action is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

Dated at Rockville, Maryland, this 16th day of May, 2017.

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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