

From: [Hackett, Edwin](#)
To: [McDermott, Brian](#)
Cc: [Moore, Scott](#); [Roberts, Darrell](#); [Lubinski, John](#); [Monninger, John](#); [Ordaz, Vonna](#); [Safford, Carrie](#); [Scott, Catherine](#); [Lorson, Raymond](#); [Curtis, David](#); [Vaughn, James](#); [Cupidon, Les](#); [Difrancesco, Nicholas](#); [Andersen, James](#)
Subject: CRGR Review of RG 5.69
Date: Monday, April 09, 2018 1:15:30 PM

Brian,

Continued thanks to you and the NSIR staff for supporting the CRGR review of RG 5.69. As you know, we have now met twice with the staff (November 30, 2017, and February 22, 2018) and once with the industry and UCS (January 16, 2018) on the proposed Revision 1 to RG 5.69.

CRGR met separately after the February 22, 2018, meeting to deliberate on the matter. The following is a brief summary of our deliberations. The summary is necessarily maintained at a high level to avoid sensitive details:

- NSIR staff presented 14 items that have been modified in Revision 1 to RG 5.69, and that have been discussed at length for several years between the staff and cleared stakeholders.
- Based on these stakeholder discussions, the staff and cleared stakeholders are aligned that 10 of the items are clarifications of Revision 0 and do not expand the scope of the design basis threat (DBT).
- Staff and stakeholders aligned that an 11th item (i.e., vehicle characteristics) is a change and would only be forward fit. Specifically, this item is within the scope of the DBT but goes beyond the current language in Revision 0.
- The staff and UCS believe the other three items (i.e., use of explosives, coordinated attack, breaching) are clarifications of Revision 0 and do not expand the scope of the DBT. Industry believes the discussion of these three items in Revision 1 goes beyond the current language of Revision 0 and goes beyond the scope of the DBT. Therefore, they believe they represent new positions and may be imposed as backfits.
- The CRGR agrees with both the staff and stakeholders that items 1-10 that were previously discussed between the staff and stakeholders constitute clarifications of the current wording in Revision 0 and existing interpretations of the DBT.
- The CRGR agrees with both the staff and stakeholders that the 11th item is a forward fit.
- The CRGR acknowledged that while a Regulatory Guide cannot impose a backfit, CRGR has concluded that the wording in the implementation section of Revision 1 of the Regulatory Guide could lead to backfitting. Further, CRGR does not agree with the staff's position that three items (i.e., use of explosives, coordinated attack, breaching) are clarifications of the language of Revision 0 of the Regulatory Guide, and believes that, under some scenarios, staff implementation of these sections could lead to different interpretations of the DBT than previously considered.
- The staff should consider either: (1) move forward with issuing the draft RG with only the 10 items that are clarifications and within the current interpretation of the DBT and resolve the other 4 items through a different process; or (2) appropriately modify the

implementation of the Revision 1 to clearly state it is only applicable to licensees who commit to use it as part of its licensing basis.

As you are aware, the CRGR is working with your staff and OGC in preparing a formal meeting summary to capture the above information in more detail. However, we wanted to provide this summary assessment to you in advance and make it available for discussions with cleared stakeholders. We apologize for the delay in getting this to you.

Les Cupidon and Nick DiFrancesco are the points of contact for CRGR if you have any questions.

Thanks,

Ed