



SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 24, 2019

IN RESPONSE, PLEASE
REFER TO: M190124A

MEMORANDUM FOR: Margaret M. Doane
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary 

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:55 A.M.,
THURSDAY, JANUARY 24, 2019, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-16-0142 – DRAFT FINAL RULE—MITIGATION OF BEYOND-DESIGN-BASIS
EVENTS (RIN 3150-AJ49)

The Commission approved a final rule that amends Parts 50 and 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), with the enclosed changes. Additionally, the Commission has certified, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities.

The Commission recognizes the considerable efforts taken in response to the Fukushima accident by the agency and the industry and notes that most of the safety enhancements to operating plants in response to the Fukushima accident were in place by the end of 2016. This final rule makes amendments to the NRC's regulations that make the requirements issued in NRC Order EA-12-049, "Order Modifying Licenses with regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events," and NRC Order EA-12-051, "Order Modifying Licenses with regard to Reliable Spent Fuel Pool Instrumentation," generically applicable taking into account lessons learned in their implementation and feedback received from stakeholders.

For items that have been addressed at the regulatory guidance level, e.g., staffing and communications, training matters, integration, and drills and exercises, the Commission considered first whether inclusion of a requirement on the subject in the final rule would be necessary to ensure that there is adequate protection of public health and safety. The Commission concluded that the requirements imposed by the Orders are sufficient to provide reasonable assurance of adequate protection of public health and safety and no new information was developed that would modify this conclusion. In light of this, and given the inapplicability of the backfit rule's compliance exception in 10 CFR 50.109(a)(4)(i), the Commission considered whether there would be a cost-justified substantial increase in the overall protection of the public health and safety or the common defense and security that would

result from including requirements in the final rule for those items rather than continuing to address them in regulatory guidance as had been done for the orders. The Commission found no basis to conclude that codifying these items in the final rule would constitute a substantial increase in the overall protection of the public health and safety or the common defense and security.

For ongoing reevaluated hazard assessments, the site-specific 10 CFR 50.54(f) process remains in place to ensure that the agency and its licensees will take the needed actions, if any, to ensure that each plant is able to withstand the effects of the reevaluated flooding and seismic hazards. The staff should continue these efforts, utilizing existing agency processes to determine whether an operating power reactor license should be modified, suspended, or revoked in light of the reevaluated hazard. The Commission acknowledges that much of the flooding and seismic reevaluation work has been completed. The staff is directed to continue to pursue the expeditious closure of the remaining post-Fukushima 10 CFR 50.54(f) letters on a timeframe commensurate with each item's safety significance.

The Commission has been deliberate in its use of the term "reasonable protection" with respect to the rule. The staff should limit the use of this designator to equipment whose purpose is to perform the mitigation strategies for beyond-design-basis events from external hazards.

Following incorporation of these changes, the Federal Register notice should be reviewed and forwarded to the Office of the Secretary for signature and publication.

The staff should make any necessary conforming changes in other rulemaking documents, including the "NRC Response to Public Comments" and "Regulatory Analysis," to reflect the changes identified in the FRN and in the Backfitting and Issue Finality Assessment.

The revised final rulemaking package should be provided to the Commission for information at least 10 days before submittal to the Office of the Federal Register for publication.

Enclosures:

1. Changes to the Federal Register Notice
2. Changes to Backfitting and Issue Finality Assessment

cc: Chairman Svinicki
Commissioner Baran
Commissioner Burns
Commissioner Caputo
Commissioner Wright
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